NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

MAC No. 892 of 2015

1. Smt. Mongara Bai Wd/o Liladhar Sahu Aged About 30 Years
2. Hemant Kumar S/o Late Liladhar Sahu Aged About 11 Years
3. Devesh Kumar S/o Late Liladhar Sahu Aged About 9 Years
4. Kundan Kumar S/o Late Liladhar Sahu Aged About 7 Years
5. Khudiram Sahu S/o Panch Ram Sahu Aged About 50 Years
6. Janki Bai W/o Khubiram Sahu Aged About 55 Years
   Appellants No.2 to 4 are minor hence impleaded through their natural guardian mother i.e. appellant No.1, Smt. Mongara Bai, Wd/o Liladhar Sahu, aged about 30 years
   All R/o Village and Post Murmunda, P.S. Nandini, District- Durg, Chhattisgarh

---- Appellants

Versus

1. Shri Pati Narayan Ojha S/o Late Kedar Nath Ojha R/o 17/B, Street No. 26, Sect.-5, P.S. Kotwali, Bhilai Nagar, District- Durg, Chhattisgarh
2. Smt. Rina Pandey S/o Ashok Pandey R/o Sangam Chowk, New Khursipar, Bhilai, District- Durg, Chhattisgarh
3. ICICI Lombard General Insurance Com. Ltd. Through In Charge Officer, ICICI Lombard Ins. Co. Ltd., Vanijy Bhawan, Devendra Nagar, Raipur, District- Raipur, Chhattisgarh

---- Respondents

For Appellants : Shri Amiyakant Tiwari, Advocate
For Respondents 1 & 2 : None
For Respondent No.3 : Shri Sourabh Sharma, Advocate

(Proceedings through Video Conferencing)

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

25.08.2021

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 26.03.2015 passed by the Chief Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.09 of 2012 whereby

learned Claims Tribunal allowed an application filed under Section 166 of the M.V. Act in part, awarded Rs.8,80,000/- as total compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization in a fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 26.03.2012, at about 10.30 P.M, when Liladhar Sahu was travelling on motorcycle bearing No.CG-07/LS/0265, one Scorpio Vehicle bearing No.CG-07/NA/1666 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently dashed motorcycle near village Kandarka. In accident, both the riders of motorcycle suffered grievous injuries on their person and died.

3. Appellants/claimants who are widow, minor children and parents of Late Liladhar Sahu filed an application under Section 166 of M.V. Act before the Claims Tribunal seeking compensation of Rs.34,24,000/- on different heads pleading therein that on the date of accident, deceased was an able-bodied person, aged about 32 years, earning Rs.20,000/- per month from his shop and as Insurance Agent. Claimants were dependent upon the income of deceased and after his death, they were deprived from his income.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle, even after service of notice did not choose to appear before learned Claims Tribunal and were proceeded *ex parte*.

5. Non-applicant No.3/Insurance Company submitted reply, resisting

the claim, it was further pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective driving licence, offending vehicle was being used for commercial purpose by non-applicant No.2, hence, there was breach of policy conditions. There was contributory negligence of drivers of both the vehicles. Amount of compensation claimed is highly exaggerated.

6. On appreciation of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that Liladhar Sahu died on account of motor accidental injures due to rash and negligent driving of offending vehicle by non-applicant No.1, contributory negligence and breach of policy conditions were not found to be proved and awarded Rs.8,80,000/- as total compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization.

7. Shri Amiyakant Tiwari, learned counsel for the appellants/claimants would submit that appellants/claimants in their claim application have very specifically pleaded nature of occupation of deceased and his income. He submits that in the evidence also appellant No.1 Smt. Mongara Bai examined herself as AW-1, wherein she stated that her husband was working as Insurance Agent and running Kundan Auto Part Shop and earning Rs.20,000/- per month. In support of income as Insurance Agent, claimants have filed Ex.P/12 issued by PACL India Limited showing commission and earning of deceased in the year 2009, 2010 and 2011. Claimants have

examined one Purshottam Barik as AW-3, employee of PACL India Limited, who proved that deceased was working as Agent in PACL India Limited. Claimants have proved the nature of occupation and employment of deceased, but Claims Tribunal overlooking the evidence of nature of occupation as well as pleading and oral evidence with respect to earning of deceased, assessed only Rs.6,000/- per month as his income. He contended that income of deceased be assessed at the rate of Rs.20,000/- per month. He pointed out that Claims Tribunal has not awarded any amount of compensation towards future prospects. Looking to the age of deceased on the date of accident, leaned Claims Tribunal ought to have awarded compensation by adding income to the income of deceased towards future prospects. It is argued that Claims Tribunal has awarded Rs.50,000/- only on other conventional heads, which is much less and seeks for its enhancement. In support of his contention, he places reliance on the ruling of Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680**, and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**.

8. Per contra, Shri Sourabh Sharma, learned counsel for respondent No.3/Insurance Company would submit that learned Claims Tribunal on appreciation of evidence has rightly assessed income of the deceased and awarded just amount of compensation, which does not call for any interference. Referring to paragraph 17 of impugned

award, he submits that Claims Tribunal has rightly considered Ex.P/12 document showing income as Insurance Agent.

9. I have heard learned counsel for the respective parties and perused the record carefully.

10. So far as the submission made by learned counsel for the appellants with regard to income of deceased, perusal of pleadings would show that claimants in their claim application have pleaded that on the date of accident, deceased was earning Rs.20,000/- per month from shop and as Insurance Agent. To prove the fact that deceased was working as Insurance Agent, claimants have examined Purshottam Barik (AW-3), who stated in his evidence that Late Liladhar Sahu was having Agency Code No.1520107260 and earning commission from PACL India Limited. So the pleadings of claimants and oral statement that deceased was working as Insurance Agent, has been proved.

11. Perusal of record would further show that claimants in support of their pleadings submitted income tax returns and copy of PAN card. In the list of documents submitted on 26.11.2013, there is mention of income tax return dated 23.12.2010 and income tax return dated 31.07.2011. Both income tax returns placed on record are prior to the date of accident. Perusal of both income tax returns would show that deceased declared his income as Rs.1,55,780/- for assessment year 2010-2011 and Rs.1,59,950/- for assessment year 2011-2012. Both the documents are the documents issued by Government

Department. In both documents, original seal of the Office of the Income Tax Officer, Ward No.2(3) Raipur is mentioned.

12. The Act, under which, claimants/appellants have filed an application seeking compensation is a beneficial piece of legislation. After submission of application for grant of compensation, it is for Claims Tribunal to hold proper inquiry. Claims Tribunal in the facts of the case where the documents issued by Government Department showing income of deceased prior to his death is available on record, could have called the witness of Income Tax Department by issuing summons, so that, interest of claimants should have been protected. Learned Claims Tribunal has not conducted proper inquiry as envisaged under Section 169 of M.V. Act and Rule 228 of Chhattisgarh Motor Vehicles Rules, 1994.

13. In view of income tax returns of assessment year 2010-2011 and 2011-2012 available on record, income assessed by Claims Tribunal as Rs.6,000/- per month cannot be said to be appropriately and properly assessed. Income assessed by Claims Tribunal is liable to be and is hereby set aside. As income tax returns placed on record for assessment year 2010-11 and 2011-12 is required to be proved through witnesses, which can be done at the end of Claims Tribunal only, I find it appropriate to remand back the case to Claims Tribunal for assessing income of deceased on the date of accident and for recalculating the amount of compensation. It goes without saying that parties to claim application will be at liberty to lead further

evidence and place additional documentary evidence, if any, in support of their claim.

14. For the foregoing reasons, appeal is allowed. Impugned award is set aside so far as it relates to quantum of amount of compensation calculated by Claims Tribunal. The case is remanded back to Chief Motor Accident Claims Tribunal, Raipur, Chhattisgarh for recalculating the amount of compensation keeping in mind the judgments passed by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Nanu Ram Alias Chuhru Ram** (supra). Considering date of accident, learned Claims Tribunal is directed to decide the claim application at the earliest, preferably within a period of '5 months' from the date of receipt of copy of order passed by this Court.

15. Original record of Claim Case No.09 of 2012 be sent back forthwith along with copy of this judgment.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh