

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1193 of 2015**

1. Smt. Rajkumari Tonde W/o Majadar Tonde, Aged About 37 Years,
2. Majadar Tonde, S/o Chaitram Tonde, Aged About 40 Years, **(wrongly typed as majedar in place of Majadar in order dt. 20.12.2013)**
Both are R/o Near Chingrajpara Square, Thana Sarkanda, District- Bilaspur, Chhattisgarh.

---- Appellants**Versus**

1. Dauwaram Ratre S/o Mangal Prasad Ratre, R/o Phokatpara, Paramhans Ward, Mungeli, Tahsil and Distt. Mungeli, Chhattisgarh.
2. The I.C.I.C.I. General Insurance Company Limited, Through Branch Manager, Branch Office, Lalganga Shopping Complex, Raipur, Distt.- Raipur, Chhattisgarh,
Current Address-
ICICI Lumbered General Insurance Company Ltd. Through Branch Manager, Branch Office,
Near HDFC, Gnd. Floor, Vanijya Bhawan, Devendra Nagar Rd, Sector-3, Devendra Nagar, Raipur, P. S. Devendra Nagar, Chhattisgarh 492004.

---- Respondents

For Appellants	: Ms. Aditi Shinghvi, Advocate on behalf of Mr. Utkal Pradhan, Advocate
For Respondent No.1	: None
For Respondent No.2	: Mr. Tessy Abraham, Advocate on behalf of Mr. Amrito Das, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

08.09.2021

1. Challenge in this appeal is to impugned award dated 20.12.2013 passed by the Additional Motor Accident Claims Tribunal (F.T.C.), Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Accident Claim Case No.20 of 2013 whereby learned Claims Tribunal allowed an application filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') in part, awarded Rs.4,42,500/- 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 and fastened liability to satisfy the amount of compensation upon non-applicants jointly and severally.

2. Brief facts relevant for disposal of this appeal, are that, on 20.03.2013, Satyaprakash was travelling on Motorcycle bearing No.CG-10/EK/7121 (hereinafter referred to as 'offending vehicle') as pillion rider along with his friend Narendra alias Chhotu to Mungeli. Motorcycle driven by Narendra alias Chhotu, met with an accident with another Motorcycle, which was coming from opposite side. In the accident, Satyaprakash (pillion rider) suffered grievous injuries over his head and died due to motor accidental injuries on spot.
3. Appellants/claimants, who are parents of deceased Satyaprakash filed an application under Section 163-A of M.V. Act seeking total compensation of Rs.4,71,544/- pleading therein that on the date of accident, deceased was working as Labourer and earning Rs.3,300/- per month. It was further pleaded that they were dependent upon the income of deceased.
4. Non-applicant No.1/owner of offending vehicle submitted reply to claim application denying the facts pleaded therein, it was pleaded that on the date of accident, deceased was unmarried and aged about 25 years, it was the deceased himself, who borrowed the Motorcycle from non-applicant No.1, son of non-applicant No.1 was travelling as pillion rider. It was further

pleaded that offending vehicle was insured with non-applicant No.2/Insurance Company, hence, he is not liable to pay any amount of compensation.

5. Non-applicant No.2/Insurance Company submitted reply to claim application, resisting the claim. Insurance of offending vehicle was denied for want of proof, amount of compensation claimed is highly exaggerated, deceased was not possessed with valid and effective driving licence and there was breach of policy conditions, hence, non-applicant No.2 is not liable to pay any amount of compensation.
6. On appreciation of pleadings, oral and documentary evidence brought on record by the respective parties, Claims Tribunal held that Satyaprakash died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by Narendra alias Chhotu, breach of policy conditions were not found to be proved. Upon assessing income of deceased as Rs.3,000/- per month, calculated compensation and awarded Rs.4,42,500/- to the claimants.
7. Ms. Aditi Shinghvi, learned counsel for the appellants/claimants would submit that on the date of accident, deceased was able-bodied person, aged about 19 years. Claimants in their claim application have pleaded that deceased was working as Labourer and earning Rs.3,300/- per month. Accident took place on 20.03.2011, hence, learned Claims Tribunal ought to have accepted the pleadings and submissions made by the claimants with regard to income of deceased as Rs.3,300/- per month, but learned Claims

Tribunal without assigning any reason, assessed income on notional basis as Rs.3,000/- per month only. She submits that income of deceased be assessed as Rs.3,300/- per month and Rs.39,600/- per annum. It is contended that award of compensation on other conventional heads is just and proper and prays for enhancement of amount of compensation suitably.

8. Per contra, Mr. Tessy Abraham, learned counsel for respondent No.2/Insurance Company supporting the award passed by learned Claims Tribunal, would submit that application was filed under Section 163-A of the M.V. Act, claimants except pleadings and oral statement has not brought on record any evidence to prove income of deceased. Learned Claims Tribunal considering the date of accident, justified in assessing income of deceased as Rs.3,000/- per month. He further submits that learned Claims Tribunal awarded excess amount of compensation in the facts and circumstances of the case. He further pointed out that learned Claims Tribunal awarded Rs.5000/- towards pain and suffering, which is not the head under Second Schedule of M.V. Act to award compensation.
9. I have heard learned counsel appearing for the respective parties and perused the record carefully.
10. Learned counsel for the appellants raised only one question with regard to income of deceased. In absence of any proof of income, income is to be assessed on notional basis, considering the date of accident, age of deceased, wage

structure, nature of occupation, price index etc. In the instant case, age of deceased has been reckoned by learned Claims Tribunal as 19 years, hence, even if, occupation of deceased is to be accepted as manual Labourer, then also income pleaded and stated by claimants, in the considered opinion of this Court, cannot be said to be on higher side. Hence, I find it appropriate to assess the income of deceased as Rs.3,300/- per month and Rs.39,600/- per annum. As this Court is recomputing the amount of compensation, amount of compensation is to be calculated and awarded strictly in accordance with Second Schedule and only under the heads mentioned therein.

11. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimants requires re-consideration and re-computation, which is as under :

Income of deceased is assessed as Rs.3,300/- per month and Rs.39,600/- per annum. After deducting 1/3rd towards personal and living expenses, annual loss of dependency of claimants will be Rs.26,400/- ($39,600 / 3 = 13,200$ and $39,600 - 13,200$). Upon applying the multiplier of 16 to annual loss of dependency, total loss of dependency of claimants will come to Rs.4,22,400/- ($26,400 \times 16$). Apart from above amount of compensation towards loss of dependency, claimants are further entitled for a sum of Rs.2,500/- towards loss of estate and Rs.2,000/- towards loss of funeral expenses.

12. Upon re-computation of the amount of compensation, it comes to Rs.4,26,500/- whereas Tribunal awarded Rs.4,42,500/-. As this appeal is filed by the claimants seeking enhancement of the amount of compensation, the amount of compensation already awarded by Claims Tribunal could not be reduced.
13. For the foregoing reasons, I do not find any good ground to interfere with the impugned award. Appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh