NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1081 of 2015

1. Deepak Toppo S/o Chandra Dev, aged about 45 years Caste- Uranw.
2. Smt. Dhaneshwari W/o Chandra Dev, aged about 40 years Occupation House Wife.
   Both R/o Village- Kotak Tal, Post- Mahora, Thana- Patana, Tahsil- Baikunthpur, District- Koriya (CG)

---- Appellants/Claimants

Versus

1. Mohelal S/o Mangal Say, Aged About 45 Years Caste- Gond, Owner Of Offending Vehicle Tractor
2. Shanker @ Bablu Rajware S/o Dhansay Rajware, Aged About 19 Years Caste- Rajwar, Driver of offending vehicle Tractor,
   Both R/o Village- Latma, Post- Katgodi, Thana & Tahsil- Sonhat, District- Koriya (CG).
3. Branch Manager, Sarguja Kshetriya Villager Bank, Katgodi, Thana & Tahsil- Sonhat, District- Koriya (CG) (Financer)
4. Nilesh Kumar S/o Jawahar, Aged About 22 Years Caste- Uranw. (Owner of Tata Magic).
5. Bablu S/o Jawahar, Aged About 20 Years Caste- Uranw, (Driver of Tata Magic)
   Both R/o Village- Kotak Tal, Post- Mahora, Thana- Patana, Tahsil- Baikunthpur, District- Koriya (CG).
6. Shri Ram General Insurance Company, Head Office E-8, Jeep Industrial Area, Shitapur, Jaipur, Rajashatan, Durbhash- 01413929400 (Insurer)
7. The United India Insurance Company Limited, Branch Office Bramh Road, Ambikapur, District- Sarguja (CG)

---- Respondents

For Appellants	:	Mr. A.L.Singraul, Advocate
For Respondent No.1 to 5	:	None
For Respondent No.6	:	Mr. Deepak Gupta, Advocate
For Respondent No.7	:	Mr. Dashrath Gupta, Advocate

Hon'ble Shri Parth Prateem Sahu, J

Order On Board

9/9/2021

1. Claimants-appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988') seeking enhancement in amount of compensation awarded by learned Additional Motor Accident Claims Tribunal

(FTC), Baikunthpur, District Koriya (CG) in Claim Case No.96/13 thereby allowing application filed for grant of compensation under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') in part; awarding amount of Rs.1,00,000/- as total compensation in a fatal accident case.

2. Facts of the case, in brief, are that on 29.2.2012 at about 7.45 p.m. Manita, daughter of appellants, along with others was returning her home situated in village Kotaktaal in vehicle Tata Magic bearing registration number CG16-G-0157, after attending marriage ceremony in village Kushmaah. When they reached near Shivghata Shiv Temple, one tractor bearing registration number CG16-E-0455, driven rashly and negligently by non-applicant No.1-driver, dashed against Tata Magic in which Manita was travelling. In the accident, Manita suffered grievous injuries on her head. She was taken to the hospital at Baikunthpur where she succumbed to injuries during the course of her treatment.

3. Claimants-appellants, who are parents of deceased, filed an application under Section 166 of the Act of 1988 seeking total amount of compensation of Rs.22,00,000/- under different heads. It was pleaded in claim application that on the date of accident, Late Manita was 19 years of age, she was studying in Class 11th and earning Rs.7,000/- p.m. by giving tuitions.

4. Non-applicant No.1 & 2, owner and driver of offending vehicle, submitted their reply to claim application denying the facts pleaded therein including the fact that accident was caused by

offending vehicle. Amount of compensation claimed is highly exaggerated. The vehicle in which deceased was travelling turned turtle due to rash and negligent driving by its driver i.e. non-applicant No.5.

5. Non-applicant No.3, financier of offending vehicle, submitted reply to claim application and pleaded that on the date of accident, deceased being a student was fully dependent upon appellants-claimants. Accident was the result of rash and negligent act on the part of driver of vehicle in which deceased was travelling. On the date of accident, non-applicant No.1, driver of offending vehicle, was not possessed with valid and effective driving license. As the offending vehicle was plied on road in breach of conditions of insurance policy, non-applicant Insurance Company is not liable to indemnify the insured.

6. Non-applicant No.6, Insurer of Tata Magic, submitted its reply to application and denied the facts pleaded therein including the fact that accident occurred due to rash and negligent driving of non-applicant No.5-driver, who was possessing valid and effective driving license on the date of incident.

7. Non-applicant No.7-Insurer of offending vehicle, also submitted its reply to claim application pleading therein that deceased was student, she was not doing any work and was fully dependent on her parents. Offending vehicle was insured for agriculture purpose, whereas at the time of accident it was being used for carrying passengers. There was breach of policy condition as non-applicant No.1 was not possessed with

valid and effective driving license on the date of accident.

8. The Claims Tribunal based upon the pleadings and evidence placed on record by respective parties, held that deceased Manita died due to injuries suffered by her in motor vehicular accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1; breach of policy condition is found to be proved and consequently, allowed claim application in part, awarded total sum of Rs.1,00,000/- as compensation together with interest @ 6% p.a. from the date of filing of claim application till actual realization and fastened liability upon non-applicant Nos.1 & 2 to make payment of entire amount of compensation.

9. Mr. A.L. Singraul, learned counsel for appellants submits that the amount of compensation awarded by Claims Tribunal is on lower side in the facts and circumstances of case. Date of accident is 29.2.2012, at that time deceased was 19 years old student of Class 11th. Claimants have categorically pleaded in claim application that deceased was offering private tuitions and thereby earning Rs.7,000/- per month, but Claims Tribunal ignoring the pleadings and evidence placed on record by claimants had assessed income of deceased as Rs.1,500/- per month only. He submits that even in absence of any acceptable documentary evidence establishing income of deceased, the Claims Tribunal is under obligation to assess income of deceased/victim on notional basis taking into consideration factors like date of accident, age of deceased

etc. Hence, Claims Tribunal should have assessed income of deceased as Rs.4,500/- per month. He further contended that the Claims Tribunal erred in applying multiplier of 10 considering age of parents/claimants. As per decision of Hon’ble Supreme Court in **Sube Singh & anr v. Shyam Singh (Dead) & ors** reported in **(2018) 3 SCC 18**, multiplier should be adopted on the basis of age of deceased. Hence, in present case appropriate multiplier would be '18' and not '10' as applied by Claims Tribunal. He further contended that Claims Tribunal erred in not awarding any amount of compensation towards future prospects, as held by Hon’ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**. The amount awarded under other conventional heads is also on lower side and deserves to be enhanced in view of decision of Hon’ble Supreme Court in case of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130.**

10. Mr. Deepak Gupta, learned counsel for respondent No.6 would submit that the Claims Tribunal has held that accident was the result of rash and negligent driving of offending vehicle by its driver and accordingly exonerated respondent No.6- Insurance Company and fastened liability upon non-applicant Nos.1 & 2, owner & driver of offending vehicle, jointly and severally.

11. Mr. Dashrath Gupta, learned counsel for respondent No.7

Insurance Company would submit that claimants themselves have pleaded that deceased was student, hence she must not have any source of income. Claims Tribunal has rightly assessed income of deceased as Rs.1,500/- which does not call for any interference. He further submits that on the date of accident, non-applicant No.1 was driving offending vehicle but he was not possessed with valid and effective driving license, hence Claims Tribunal has rightly exonerated insurance company from its liability to indemnify insured and directed non-applicant No.1 & 2 to make payment of entire amount of compensation, jointly and severally.

12. At this stage, Mr. A.L. Singraul, learned counsel for appellants would submit that respondent No.7 has been exonerated only on the ground that at the time of accident, non-applicant No.1, driver of offending vehicle, was not possessed with valid and effective driving license. However, insurance policy issued by respondent No.5 was effective on the date of accident, therefore, with a view to protect interest of appellants, respondent No.7 be directed to first deposit the entire amount of compensation along with interest before the Claims Tribunal and then to recover the same from non-applicant No.1 & 2, driver and owner of offending vehicle, in accordance with law.

13. I have heard learned counsel for the parties and perused record of claim case.

14. So far as first submission made by learned counsel for appellants with regard to assessment of income of deceased

as Rs.1,500/- per month by Claims Tribunal is concerned, perusal of record would reveal that except making pleadings and oral statement, appellants have not produced any admissible piece of evidence establishing that deceased was earning Rs.7,000/- per month by giving tuitions. It is well settled that in absence of evidence establishing occupation and income of victim/deceased, income is to be assessed on notional basis. In case at hand, on the date of accident, deceased was 19 years old; she was residing in rural area, hence, I find it appropriate to assess income of deceased as Rs.3,000/- per month in place of Rs.1,500/- as assessed by Claims Tribunal. It is ordered accordingly.

15. Perusal of impugned award would reveal that Claims Tribunal has not awarded any amount towards future prospects. Hon'ble Supreme Court in case of Pranay Sethi (Supra) has held that in cases where deceased was below 40 years of age and not in permanent employment, claimants will be entitled for an addition of 40% of established income of deceased/ victim towards future prospects for the purpose of computing total income of deceased. In case at hand, on the date of accident, deceased was 19 years of age and not in permanent job, hence appellants will be entitled for addition of 40% of established income towards future prospects. It is ordered accordingly.

16. Further perusal of impugned award reveals that Claims Tribunal considering age of claimants/parents on the date of

accident has applied multiplier of 10, which in the opinion of this Court is not correct. The issue as to what would be appropriate multiplier in cases where deceased was unmarried, has come up for consideration before Hon'ble Supreme Court in case of **Sube Singh (supra)** and while referring to its earlier decisions in **Sarla Verma's (supra)** and **Munna Lal Jain vs. Vipin Kumar Sharma** reported in **(2015) 6 SCC 347**, has held thus:-

> "4. ...The legal position, however, is no more res integra. In Munna Lal Jain[4] decided by a three-Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants. We may usefully refer to the exposition in paras 11 and 12 of the reported decision, which read thus: (Munna Lal Jain case, SCC pp. 351-52)
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> > "11. The remaining question is only on multiplier. The High Court following Subhash Devi[6] has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for some time; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari[7]. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote: (Reshma Kumari case[7], SCC p. 88, para 36)
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> > > '36. In Sarla Verma[3], this Court has endeavoured to simplify the otherwise

> complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma[3] that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma[3].'

12. In Sarla Verma[3], at para 19 a two-Judge Bench dealt with this aspect in Step 2. To quote: (SCC p. 133)

> '19. ...Step 2 (Ascertaining the multiplier) Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.' "

From the above it is clear that multiplier should be determined on the basis of age of deceased and not on basis of age of parents. Hence, this Court is of the view that Claims Tribunal erred in applying multiplier '10'. Looking to the age of deceased on the date of accident i.e. 19 years, the correct multiplier would be '18'. It is ordered accordingly.

17. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to appellants.

18. As discussed above, income of deceased is taken as Rs.3,000/- per month and since at the time of accident deceased was 19 years of age and was not in permanent employment, therefore, in view of law laid down in case of **Pranay Sethi's case** (supra), income of deceased is required to be enhanced by 40% towards future prospects, which comes to Rs.4,200/- (3000+1200). Annual income of deceased for the purpose of calculating compensation comes to Rs.50,400/- (4200x12). On the date of accident, deceased was unmarried, therefore, out of this amount, one-half is to be deducted towards personal & living expenses, as per decision of Hon'ble Supreme Court in Sarla Verma's case (supra). After deducting one-half, annual loss of dependency comes to Rs.25,200/- (50400-25200). By applying multiplier of 18, as held above, to annual loss of dependency, total loss of dependency comes to Rs.4,53,600/- (25200x18). Besides this, appellant, parents of deceased are entitled for a sum of Rs.40,000/- for filial consortium, as held by Hon'ble Supreme Court in the matters of **Pranay Sethi (supra)** and **Nanuram (supra)**. In addition to aforesaid amount, appellants will also be entitled for Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, total amount of compensation comes to Rs.5,23,600/-. Now claimants/ appellants will be entitled for total amount of compensation of Rs.5,23,600/- in place of Rs.1,00,000/-, as awarded by Claims Tribunal. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application

till its realization. Rest of conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants-appellants as compensation shall be adjusted from total amount of compensation as calculated above.

19. Now the question arises for consideration before this Court is whether in the given facts of case, a direction can be issued to respondent insurance company to first pay entire amount of compensation to claimants-appellants and then recover the same from owner & driver of offending vehicle i.e. respondent No.1 & 2 herein. Hon'ble Supreme Court in **Shamanna & anr Vs. Divisional Manager, Oriental Insurance Company Ltd. & ors** reported in **(2018) 9 SCC 650** while considering the issue of 'pay & recover' has held as under:-

> “5. In the case of third party risks, as per the decision in National Insurance Company Ltd. vs. Swaran Singh & ors reported in (2004) 3 SCC 297, the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Elaborately considering the insurer's contractual liability as well as statutory liability vis-a-vis the claims of third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, “pay and recover” can be ordered.....”
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> 6. As per the decision in Swaran Singh case, onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and

> there are breach of policy conditions, "pay and recover" can be ordered in case of third party risks. The Tribunal is required to consider as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, does not fulfil the requirements of law or not will have to be determined in each case."

20. In the light of above ruling of Hon'ble Supreme Court; considering beneficial object of the Act of 1998; fact that there is no dispute with respect to issuance of insurance policy in favour of offending vehicle; deceased was a third party; exoneration of insurance company is on account of not having valid and effective driving license with driver of offending vehicle; respondent No.1 & 2 have not challenged impugned award of Claims Tribunal fixing liability on them to pay entire awarded amount of compensation, I find it appropriate to direct respondent No.7- United India Insurance Company Ltd. to first satisfy entire amount of compensation and thereafter to recover it from respondent No.1 & 2, owner & driver of offending vehicle, in accordance with law.

21. Accordingly, the appeal is allowed in part. Impugned award stands modified to the extent indicated above

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-