**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**
**MAC No. 780 of 2015**

1. Bhuneshwar Vatti S/o Gautam Vatti, Aged About 22 Years, R/o Village Surhi, Thana, Narharpur, Distict- Kanker, Chhattisgrh.
2. Jeevan Vatti S/o Gautam Vatti, Aged About 23 Years, R/o Village Surhi, Thana, Narharpur, Distict- Kanker, Chhattisgrh.
3. Smt. Seema Bai Markam W/o Nirmal Markam, Aged About 28 Years, R/o Dhavrabhatha, Tahsil Narhapur, District- Kanker, Chhattisgrah.

**---- Appellants**

**Versus**

1. Chandrahas Chakradhari S/o Samund Lal, Aged About 25 Years, R/o Village Kunal Themli, PO. - Bhansuli, Thana- Narhapur, District- Kanker, Chhattisgrah. **(Driver).**
2. Hemlal Markam S/o Sangram Markam, R/o Village Kunal Themli, PO.- Bhansuli, Thana- Narharpur, District- Kanker, Chhattisgarh. **(Owner).**
3. Reliance General Insurance Company Limited, Shop No.412-413, 2nd Floor, Ravi Bhavan, Jaistambh Chowk, Raipur, Ditt.- Raipur, Chhattisgrah.

**--- Non-applicant Nos.1 to 3/Respondents**

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| For Appellants | : | Mr. Arvind Prasad, Advocate on behalf of Mr. Samir Singh, Advocate. |
| For Respondent Nos.1 and 2 | : | None. |
| For Respondent No.3 | : | Mr. Rohitashva Singh, Advocate on behalf of Shri N.K. Thakur, Advocate. |

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**Hon'ble Shri Justice Parth Prateem Sahu**
**Order on Board**

**08/09/2021**

1. Claimants-appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of amount of compensation awarded by learned Motor Accident Claims Tribunal, North Bastar, Kanker, (CG) (for short 'Tribunal') vide award dated 12.03.2015 in Claim Case No.41/2013, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.2,31,000/- in a fatal accident case alongwith interest @ 6% p.a, fastened liability upon non-applicant Nos.1 to 3, jointly and severally, to pay amount of compensation.

2. Facts relevant for disposal of this appeal are that on 15.06.12 Kaushalya Bai alongwith his relatives was returning back to her village -Surhi from village Kodemunda on Jeep bearing registration No.CG-19-T-0226, (for

short 'offending vehicle') after attending birth ceremony. On the way, offending vehicle turned turtle due to rash and negligent driving of offending vehicle by non-applicant No.1, as a result, Kaushalya Bai suffered grievous injuries. She was taken to Government Hospital, Kanker where during the course of treatment she succumbed to injuries.

3. Appellants/claimants, who are son and daughter of deceased, filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.7,05,000/- pleading therein that on the date of accident, deceased was working as Labourer and earning Rs.200/- per day. Claimants were dependent upon income of deceased.

4. Non-applicant Nos.1 & 2/driver and owner offending vehicle, submitted reply and resisted the claim. It was further pleaded that accident was not a result of rash and negligent driving of offending vehicle by non-applicant No.1. On the date of accident, non-applicant No.1 was possessed with valid and effective driving license, offending vehicle was insured with non-applicant No.3, hence liability, if any, to pay amount of compensation would be of non-applicant No.3.

5. Non-applicant No.3/Insurance Company also submitted its reply to claim application denying facts pleaded therein. It was further pleaded that on the date of accident non-applicant No.1 was not having valid and effective driving license to drive offending vehicle. There was no valid permit or fitness certificate to ply offending vehicle on road and as such, there was breach of policy condition. Hence, Insurance Company is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Kaushalya Bai died on account of motor-accidental injuries due to rash and negligent driving of offending

vehicle by non-applicant No.1. Accordingly, Tribunal allowed application in part, assessed income of deceased as Rs.3,000/- per month, awarded total compensation of **Rs.2,31,000/-** alongwith interest @ 6% per annum and fastened liability upon non-applicant Nos.1 to 3, jointly and severally.

7. Learned counsel for appellants/claimants submits that Tribunal erred in awarding very meager amount of compensation. Tribunal assessed income of deceased at Rs.3,000/- per month only, overlooking the date of accident. Tribunal ought to have determined income of deceased as Rs.4,500/- per month on notional basis. Tribunal based on post-mortem report has reckoned age of deceased as 55 years, but applied multiplier of '9' considering deceased to be in age group of 55-60 years, which is erroneous in view of decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**[1]. He further submits that Tribunal has not added any amount towards future prospects in income, as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[2]. Award of Rs.15,000/- under other conventional heads is also on lower side and needs to be enhanced in light of decision of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors**[3].

8. Learned counsel for respondent No.3-Insurance Company submits that claimants failed to prove income of deceased by placing cogent and reliable piece of evidence on record. In absence of such evidence, Tribunal justified in assessing income of deceased on notional basis. **A**ppellant/claimants also failed to prove age of deceased. In view of

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1 (2009) 6 SCC 121
2 (2017) 16 SCC 680
3 (2018) 18 SCC 130.

pleadings and evidence brought on record, Tribunal awarded just amount of compensation which does not call for any interference.

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

10. So far as submission of learned counsel for appellants, with respect to assessment of income of assessed by Tribunal is concerned, perusal of record would show that in claim application claimants have pleaded occupation of deceased as 'labourer'. Except pleading with respect to income of deceased as Rs.6,000/- per month and oral statement, no admissible piece of evidence is available on record showing income of deceased as pleaded and stated by claimants. In such a situation, Tribunal justified in assessing income of deceased on notional basis, but at the same time Tribunal has not considered the factors like age of deceased, nature of occupation, wage structure and cost of living on the date of accident ie on 15.06.12. In the year 2012 an ordinary manual labourer could have earned more than what is assessed by Tribunal. Taking into consideration the aforementioned factors, I find it appropriate to assess income of deceased as Rs.4,000/- per month. It is ordered accordingly.

11. Coming to the next submission with respect to application of multiplier based on age of deceased, claimants have not placed on record any documents showing age of deceased. Tribunal has considered age of deceased as mentioned in Post-Mortem report as Ex.P-5 wherein age of deceased is mentioned as 55 years. Hon'ble Supreme Court in case of **Sarla Verma** (supra) has issued guidelines for application of multiplier based on age group and held that where deceased was in age group of 51-55 years, multiplier of '11' will be applicable. Tribunal has applied

multiplier of ‘9’ prescribed for age group of 56-60 years. When Tribunal itself reckoned age of deceased based on post-morterm report as 55 years, in the considered opinion of this Court appropriate multiplier would be ‘11’ instead of ‘9’. It is ordered accordingly.

12. Coming to next argument advanced by learned counsel for appellant that Tribunal erred in not adding any amount towards future prospects in income, Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that in case deceased/victim of motor accident, was not in permanent employment and between the age group of 50 to 60 years, an addition of 10% of established income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> “59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

13. Indisputably, in case at hand, on the date of accident, deceased was in the age group between 50-60 years and not in permanent employment, therefore, there shall be addition of 10% of established income towards future prospects to income of deceased for assessing total income for the purpose of calculating compensation.

14. In case of **Pranay Sethi** (supra) Hon'ble Supreme Court has specified the heads for awarding compensation on other conventional heads and also quantified the amount for those heads. The heads on which compensation is to be awarded are loss of consortium, loss of estate and funeral expenses. In case of **Nanu Ram** (supra), Hon'ble Supreme Court has explained the types of consortium, to be of three types ie loss of spousal

consortium to wife or husband, loss of parental consortium to children and loss of filial consortium to parents of deceased.

15. For the foregoing reasons, I propose to recompute the amount of compensation to be awarded to claimants.

16. Income of deceased is taken as Rs.4,000/- per month. By adding 10% of established income towards future prospects, total monthly income of deceased comes to Rs.4,400/- (Rs.4,000 + 10% of 4,000) and annual income as Rs.52,800/- (12 X Rs.4400). Number of dependents on the date of accident were '3', therefore, there will be deduction of 1/3rd of income towards personal and living expenses as per decision of Hon'ble Supreme Court in case of **Sarla Verma (supra).** After deducting 1/3rd towards personal & living expenses, yearly loss of dependency will come to Rs.35,200/- (Rs.52,800 – 1/3 of Rs.52,800/-). By applying multiplier of ‘11’ to annual loss of dependency, total loss of dependency will come to Rs.3,87,200/- (Rs.35,200/- X 11).

17. Apart from this, appellants are also entitled for a sum of Rs.40,000/- towards loss of parental consortium to children, Rs. 15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate.

18. Now, appellants/claimants will be entitled for a total compensation of **Rs.4,57,200/-** (Rs.3,87,200/- + Rs.40,000/- + Rs. 15,000/- + Rs.15,000/-) instead of **Rs.2,31,000/-** as awarded by Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Liability to satisfy amount of compensation shall be upon non-applicant Nos.1 to 3, jointly and severally. Rest of the conditions of impugned award shall remain intact.

19. In result appeal is allowed in part and impugned award stands modified to the extent as indicated above.

**Sd/-**
**(Parth Prateem Sahu)**
Judge

Jamal/-