

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1381 of 2015**

1. Smt. Chandrakala W/o Shri Gendeshwar Sahu, aged about 45 Years
2. Gendeshwar Sahu S/o Late Shri Premlal Sahu, aged about 50 Years
3. Praveen Kumar Sahu S/o Shri Gendeshwar Sahu, aged about 25 Years

All are R/o Panchwati Colony Dhamtari, Civil and Revenue Distt.- Dhamtari, Chhattisgarh

---Appellants/claimants**VERSUS**

1. Lachchhan Singh S/o Dehari Ram, aged about 35 Years Wrongly Mentioned age 65 In Order Caste- Gond, R/o Village- Kochera, Thana- Gurur, Civil And Revenue Distt.- Balod, Chhattisgarh.
2. Smt. Kumari Bai W/o Dehari Ram, aged about 60 Years Caste- Gond, R/o Village- Kochera, Thana- Gurur, Civil and Revenue Distt.- Balod, Chhattisgarh
3. Akshay Kumar S/o Dehari Ram, aged about 20 Years Caste- Gond, R/o Village- Kochera, Thana- Gurur, Civil and Revenue Distt.- Balod, Chhattisgarh.
4. Loman Singh Netam S/o Late Gend Singh, aged about 38 Years Caste- Gond, R/o Village- Kochera, Thana- Gurur, Civil and Revenue Distt.- Balod, Chhattisgarh.
5. Branch Manager, I.C.I.C.I. Lombard General Insurance Company Ltd. Near Siddhi Vinayak Mandir Prabhadevi Mumbai- 400025 Insurer of The Vehicle No. C.G.-08/ S/4500.

----Respondents

For Appellants	:	Mr. Santosh Das, Adv. On behalf of Mr. Sunil Sahu, Advocate
For Respondent 1,3 & 4	:	Mr. Rohan Patnaik, Advocate, on behalf of Mr. Goutam Khetrapal, Advocate
For Respondent 5	:	Mr. Shailesh Tiwari, Advocate, on behalf of Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****14/09/2021**

1. Challenge in this appeal is to the award dated 02.07.2015 passed

by learned Chief Motor Accident Claims Tribunal, Dhamtari, District Dhamtari, C.G. (for short "Claims Tribunal") in claim case no. 153/2014, whereby learned Claims Tribunal allowed the application for grant of compensation in part, awarded Rs. 3,49,000/- as total compensation in a fatal accident case and fastened liability to satisfy the amount of compensation upon non-applicants jointly and severally.

2. Facts of the case relevant for disposal of this appeal are that on 05.07.2014, Pradeep Sahu was travelling on motor cycle bearing registration number CG05 L 6437 while so one another motor cycle bearing registration number CG08 S 4500 (henceforth "offending vehicle") driven by Magendra rashly and negligently dashed the motor cycle driven by Pradeep Sahu and caused accident. In the said accident, Pradeep Sahu suffered grievous injuries over his person. He was immediately taken to Christan Hospital, Dhamtari where he was declared dead by the doctor.
3. Claimants who are parents and brother of deceased Pradeep Sahu filed application under Section 166 of the Act of 1988 seeking total compensation of Rs. 1,55,25,000/- pleading therein that Pradeep Sahu was graduated in Engineering (B.E.) (Mech.) from MATS University. He was a brilliant student and got offers of job during the college days.
4. Non-applicants 1 to 4 submitted their joint reply denying the facts pleaded in claim application, it was further pleaded that on the date of accident late Pradeep Sahu was under influence of liquor. It is late Pradeep Sahu who caused accident. Accident was a result of contributory negligence on the part of driver of both the motor

cycles in which Magendra Sahu driver of offending vehicle also died on spot. Magendra Sahu possessed with valid and effective driving licence and the offending vehicle was insured with non-applicant 5, hence, liability if any to satisfy the amount of compensation would be on non-applicant 5.

5. Non-applicant 5/ Insurance Company submitted its reply denying entire facts pleaded in claim application, it was further pleaded that the accident was result of rash and negligent driving of motor cycle by Pradeep Sahu, crime was registered against him at police station Arjuni. There was contributory negligence on the part of driver of both the motor cycles. Owner and insurer of pulsar motor cycle driven by Pradeep Sahu is not arrayed as party non-applicants. There was no valid and effective driving licence with the drivers of both the vehicles.
6. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties held that late Pradeep Sahu suffered motor accidental injuries resulting in his death due to rash and negligent driving of offending motor cycle by late Magendra Sahu. Breach of policy conditions was not found to be proved. Deceased was prosecuting his B.E. course, assessed income of deceased as Rs. 3000/- per month, calculated the amount of compensation and awarded total sum of Rs. 3,49,000/-.
7. Mr. Santosh Das, learned counsel for appellants would submit that the Claims Tribunal erred in awarding meagre amount of compensation. Tribunal though arrived at a finding that deceased Pradeep Sahu was prosecuting his B.E. course, assessed income of deceased to be Rs. 3000/- per month only which is even less

than the wages of a manual labourer. He submits that the Tribunal erred in not awarding any amount of compensation towards future prospects and awarding meagre compensation of Rs. 25,000/- only on other conventional heads.

8. Mr. Rohan Patnaik, learned counsel for Respondents 1, 3 and 4 submits that the liability to satisfy the amount of compensation is upon Respondent 5, being insurer. Award passed by learned Claims Tribunal is just and proper in the facts and circumstances of the case which does not call for any interference.
9. Mr. Shailesh Tiwari, learned counsel for Respondent 5, submits that the claimants have not placed on record any admissible piece of evidence with respect to income of deceased, not in employment. Tribunal assessed income on notional basis considering the age of deceased which cannot be said to be on lower side, award of compensation in the facts of the case is just and proper which does not call for any interference.
10. I have heard learned counsel for the respective parties and perused the record of claim case.
11. In support of the pleadings, claimants have placed on record copies of statement of marks of late Pradeep Sahu as Ext. P-10 (c) to Ext. P-17(c). The statement of marks/ mark-sheets are issued by MATS University, which would show that the deceased prosecuted his B.E. (Mech.) and passed out in December 2013. Accident took place on 05.07.2014, which is after passing out from MATS University. Considering the qualification of deceased to be of B.E., income of deceased though not proved through any documentary

evidence, is to be assessed on notional basis. Claims Tribunal overlooking the educational qualifications of the deceased has assessed income of Rs. 3000/- per month only which is less even for assessing income of manual labourer, hence, assessment of income of Rs. 3000/- per month is not sustainable in the facts of the case and it is hereby set aside.

12. Considering the date of accident, qualification of deceased, I find it appropriate to reckon his income as Rs. 9000/- per month on notional basis. It is ordered accordingly.
13. Award of compensation towards future prospects is considered by Hon'ble Supreme Court in case of **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and held that where deceased was below 40 years of age and not in permanent employment, there shall be addition of 40% of the established income. In the case at hand, deceased was only 24 years of age, hence, there shall be addition of 40% of established income for assessing his total income on the date of accident. Appellants-claimants will be entitled for the amount of compensation on other conventional heads as held by Hon'ble Supreme Court in case of **Pranay Sethi (supra)** and **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in **(2018) 18 SCC 130**.
14. For the foregoing reasons, I propose to re-compute the amount of compensation as under.
15. Income of deceased is reckoned as Rs. 9000/- per month ie. Rs. 1,08,000 /-. Upon adding 40% of the established income in the

income of deceased, total income will come to Rs. 1,51,200/-
Deceased was unmarried, therefore, after deducting $\frac{1}{2}$ towards personal and living expenses of deceased, annual loss of dependency will come to Rs. 75,600/-. Upon applying multiplier of 18, total loss of dependency will come to Rs. 13,60,800/- [Rs.75600x18]. Apart from the amount of compensation towards loss of dependency, appellants will further be entitled for Rs. 40,000/- towards loss of filial consortium, Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenses.

16. Now the appellants/ claimants shall be entitled for total sum of **Rs. 14,30,800/-** [Rs.1360800+ Rs.40000+ Rs.15000+ Rs.15000] as compensation instead of Rs. 3,49,000/- as awarded by learned Claims Tribunal. Amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions of the impugned award shall remain intact.
17. In the result, appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge