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HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1269 of 2015

1. Smt. Kumari Bai W/o Late Shri Arun Kumar Sinha, Aged About 40 Years Caste- Sinha, R/o Jangalpara Nagari, Thana And Tahsil- Nagari, Civil And Revenue Distt.- Dhamtari, Chhattisgarh, Chhattisgarh
2. Praveen Kumar S/o Late Shri Arun Kumar Sinha, Aged About 17 Years Minor Through Natural Guardian Mother Smt. Kumari Bai Sinha W/o Arun Kumar Sinha, Caste- Sinha, R/o Jangalpara Nagari, Thana And Tahsil- Nagari, Civil And Revenue Distt.- Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
3. Ku. Diksha D/o Late Shri Arun Kumar Sinha, Aged About 15 Years Minor Through Natural Guardian Mother Smt. Kumari Bai Sinha W/o Arun Kumar Sinha, Caste- Sinha, R/o Jangalpara Nagari, Thana And Tahsil- Nagari, Civil And Revenue Distt.- Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
4. Bhuwan Lal S/o Late Shri Bihari Lal Sinha, Aged About 75 Years Caste- Sinha, R/o Jangalpara Nagari, Thana And Tahsil- Nagari, Civil And Revenue Distt.- Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
5. Smt. Brijdevi W/o Shri Bhuwan Lal Sinha, Aged About 70 Years Caste- Sinha, R/o Jangalpara Nagari, Thana And Tahsil- Nagari, Civil And Revenue Distt.- Dhamtari, Chhattisgarh ....Claimants, District : Dhamtari, Chhattisgarh

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Versus

1. Mordhwaj Thakur S/o Shivdyal Thakur, Aged About 28 Years Occupation- Driver, R/o Village- Rajoli, Thana- Ranchirai, Tahsil- Gunderdehi, Civil And Revenue Distt.- Durg, Chhattisgarh ....Driver Of The Vehicle No. C G - 04 - Z C - 2433, Chhattisgarh
2. Smt. Shayar Bai W/o Shri Bhikham Chand, Aged About 55 Years R/o Village And Post Kalangpur, Thana And Tahsil- Gunderdehi, Civil And Revenue Distt.- Balod, Chhattisgarh ....Owner Of The Vehicle No. C G - 04 - Z C - 2433, District : Balod, Chhattisgarh
3. Divisional Manager, New India Insurance Company Limited, Office Mobin Mahal, Jail Road Raipur, Tahsil- Raipur, Civil And Revenue Distt.- Raipur, Chhattisgarh Insurer Of The Vehicle No. C G - 04 - Z C

- 2433, District : Raipur, Chhattisgarh

4. Harshit S/o Banshilal Sahu, Aged About 30 Years R/o Village- Sankra, Thana And Tahsil- Nagari, Civil And Revenue Distt.- Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
5. Dulesh Kumar S/o Amrit Lal Sahu, R/o Village- Sankra, Thana And Tahsil- Nagari, Civil And Revenue Distt.- Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
6. Divisional Manager, The Oriental Insurance Company Ltd., M. B. Trade Bajar Chowk, Dhamtari, Distt.- Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh

---- Respondents

For Appellants	:	Shri Sumit Shrivastava, Advocate
For Respondent No.2	:	Ms. Astha Sharma, Advocate appears on behalf of Shri Goutam Khetrapal
For Respondent No.3	:	Shri H.P. Agrawal, Advocate
For Respondent No.6	:	Shri Deepak Gupta, Advocate

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

Order

30/09/2021

1. Challenge in this petition is to Award dated 3.7.2015 passed by learned Additional Motor Accidents Claims Tribunal, Dhamtari in Claim Case No.29 of 2014 whereby learned Claims Tribunal allowed application filed under Section 166 of the Motor Vehicles Act allowing total compensation of Rs.17,76,948/- in fatal accident case.

2. Facts relevant for disposal of the appeal are that on 3.8.2013, Arun Kumar Sinha was travelling on a jeep bearing registration No. CG-05-B/2283 and going to Nagari from Dhamtari. On the way, when they reached near village Gajkanhar, one truck bearing registration No.CG-04-ZC/2433 driving rashly and negligently by respondent/non-

applicant No.1 dashed the jeep on which deceased was travelling. In accident, Arun Kumar Sinha suffered grievous injury. He was immediately taken to Govt. Hospital Nagari where he was declared dead. Claimants who are widow, children and mother of the deceased filed application seeking compensation of Rs.50,50,000/- pleading therein that on the date of accident, deceased was an able bodied person aged about 44 years, posted as Forest Guard and earning Rs.16,734/- p.m.. They were dependents upon income of deceased.

3. Respondents No.1 & 2/non-applicants, who are driver and owner of offending truck, submitted reply to claim application denying the facts pleaded therein. It was further pleaded that non-applicant No.1 was a skilled driver having valid and effective driving license. Offending truck was insured with non-applicant No.3/Insurance Company, as such liability to satisfy the amount of compensation would be upon non-applicant No.3.

4. Non-applicant No.3/Insurance Company submitted reply to claim application denying facts pleaded in claim application. It was further pleaded that as accident was result of head on collusion between two motor vehicles, there was contributory negligence on the part of driver of both vehicles. The accident was result of rash and negligent driving of the driver of Jeep. Hence liability to satisfy the amount of compensation would be upon non-applicants No.4 to 6.

5. Non-applicant Nos.4 and 5 submitted reply to Claim Application pleading that accident was result of rash and negligent driving of offending truck by non-applicant No.1. Claimants in the greed of seeking higher amount of compensation has submitted wrong facts in

the claim application. Jeep was insured with non-applicant No.6/Insurance company. Hence liability to pay amount of compensation would be upon non-applicant No.6. Non-applicant No.6, Insurer of Jeep, submitted reply pleading that the accident was the result of negligence on the part of non-applicant No.1. Non-applicant No.4 was not possessed with valid and effective driving licence (driver of Jeep). There was breach of policy condition, hence, non-applicant No.6 is not liable to pay any amount of compensation.

6. Learned Claims Tribunal, on appreciation of pleadings and evidence brought on record by respective parties, held that Arun Kumar Sinha died on account of motor accidental injuries due to rash and negligent driving of the offending truck by non-applicant No.1. Contributory negligence and breach of policy conditions were not found to be proved. Assessing monthly income of the deceased as Rs.13,958/- and calculating amount of compensation, awarded Rs.17,76,948/-.

7. Learned counsel for the appellants submits that learned Claims Tribunal erred in assessing monthly income of the deceased overlooking the oral and documentary evidence available on record. Claimants in support of their pleadings have placed on record salary slip as Ex.A-10, certificate issued by the Forest Department certifying that the deceased was posted as Forest Guard. To prove income of the deceased, claimants have examined Teman Singh Sen, Clerk of the Department as AW3, but Tribunal has not considered evidence in its entirety. No amount of compensation is awarded towards future prospects overlooking age of the deceased on the date of accident to be less than 50 years. Amount of compensation towards other conventional head is also on lower side i.e. Tribunal awarded only

Rs.35,000/- towards other conventional heads. He further submits that amount of compensation be suitably enhanced considering income of deceased as mentioned in salary slip.

8. Learned counsel for respondents No.2 & 3 submits that amount of compensation awarded is just and proper, which does not call for any interference. Tribunal assessed income, as shown in salary slip, after deduction which cannot be said to be erroneous.

9. Shri Deepk Gupta, learned counsel for respondent No.6/Insurance Company would submit that the amount of compensation awarded is just and proper. Liability to satisfy the amount of compensation is upon non-applicant No. 1 & 3 jointly and severally and not upon respondent No.6.

10. I have heard learned counsel for the parties and perused the records of the case.

11. To appreciate submissions of learned counsel for appellant with respect to income of deceased, perusal of claim case would show that claimants in their Claim Application have pleaded occupation of deceased to be Forest Guard aged about 44 years and earning Rs.16734/- per month. To prove pleading made in Claim Application, claimants have examined Kumari Bai as AW1 and Teman Singh Sen as AW3, Clerk of the Department in which the deceased was working. Claimants have also placed on record copy of salary slip as Ex.A-10 issued by Additional Conservator of Forest and certificate issued by the official of the Department certifying that deceased was posted as Forest Guard at Nagri. In salary slip (Ex.P-10), gross salary of deceased is mentioned as Rs.16,805/-. Toman Singh (AW3), Clerk in

the Department in his statement has stated income of the deceased as Rs.15526/- for the month of July 2013. Salary slip placed on record as Ex.A10 shows salary of the deceased as Rs.16,805/- . Hence in the opinion of this Court, the deceased being Govt. servant was in service and, therefore, his income is to be taken into consideration as mentioned in Ex.P-10, salary slip. Learned Tribunal assessed income of the deceased on lower side as Rs.13,958/-. For the purpose of computing amount of compensation under the Motor Vehicles Act, gross income of an employee is to be considered minus income tax i.e. statutory deduction.

12. For the foregoing discussions, I find it appropriate to reckon income of deceased as Rs.16805/- as mentioned in Ex.A-10. Tribunal has not awarded any amount towards future prospects. Age of the deceased as pleaded in claim application was 44 years. In postmortem report, age of the deceased is mentioned as 46 years. Claimants have not placed on record any document to prove date of birth of the deceased. Hence learned Claims Tribunal justified in accepting the age of the deceased in between 46 to 50 years. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, considered issue with regard to award of compensation towards future prospects and held that where the deceased is less than 50 years of age or in between 40 to 50 years of age and in permanent employment, there shall be addition of 30% of the established income to compute total income for calculating amount of compensation. Tribunal applied deduction towards personal future expenses of 1/5th of income, which is erroneous. As this Court is re-computing amount of compensation,

in an appeal for enhancement appropriate deduction is to be applied as held by Hon'ble Supreme Court in case of **Sarla Verma vs. Delhi Transport Corporation** reported in **(2009) 6 SCC 121,** as object of the Act is to award just compensation. Tribunal awarded only Rs.35,000/- towards other conventional heads, which also is required to be enhanced in the facts and circumstances of case.

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

A. Income of the deceased is taken as Rs.16,805/- per month. Thus, annual income of the deceased would be Rs.2,01,660/-.

B. From total income, washing allowance of Rs.50/- per month (Rs.600/- annually) is to be deducted. Hence annual income of the deceased will be Rs. 2,01,060/- (201660-600). Upon adding 30% of established income of deceased, total annual income would come to Rs.2,61,378/- (2,01,060 + 60,318). As per law laid down by Hon’ble Supreme Court in the case of **National Insurance Co. Ltd. v. Indira Srivastava & Ors.** reported in **(2008) 2 SCC 763**, it is held that amount of compensation is to be calculated on net income. Net income would be gross income minus income tax. As per tax slab of the assessment year 2013-14, income up to Rs.2 lakh was exempted and income above Rs.2 lakh up to Rs.5 lakh was taxable at the rate of 10%. The taxable income will come to Rs.61,378/-. Income tax @ 10% on taxable income would be Rs.6137.80 paise, which is rounded off to Rs.6,138/-. By deducting income tax i.e.

Rs.6,138/- from total income, net income would be Rs.2,55,240/-(261378-6138) . Deceased was survived by five dependents, hence there shall be deduction of ¼ towards personal and living expenses. Upon applying deduction of ¼ to net income, annual loss of dependency will come to Rs.1,91,430/-. (255240 x ¼ =63810 and 255240-63810). Upon applying the multiplier of 13 to annual loss of dependency, total loss of dependency will come to Rs.24,88,590/- (1,91,430 x 13).

C. Besides compensation towards loss of dependency, claimants shall further be entitled to Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.40,000/- towards loss of filial consortium, Rs.15,000/- towards loss estate consortium, Rs.15,000/- towards funeral expenses.

14. Now appellants shall be entitled to total compensation of Rs.26,38,590/- (24,88,590 +40,000 + 40,000 + 40,000 + 15,000 + 15,000), instead of Rs.17,76,948/- as awarded by learned Claims Tribunal. Aforementioned amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization. Other conditions of impugned Award shall remain intact.

15. In the result, appeal is allowed in part. Impugned award is modified to the extent as indicated herein above.

Sd/-
(Parth Prateem Sahu)
Judge

Praveen