

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 88 of 2015**

1. Smt. Kamta Bai wife of late Maan Singh, aged about 34 years
2. Ishwari Prasad son of late Maan Singh, aged about 22 years
3. Ku. Mona @ Ganga daughter of late Maan Singh, aged about 14 years
4. Lokesh Bharti son of late Maan Singh, aged about 12 years
5. Ku. Savitri daughter of late Maan Singh, aged about 07 years
6. Preetam Bharti son of late Maan Singh, aged about 04 years
7. Ramcharan Bharti son of late Sahasram Bharti, aged about 55 years
8. Smt. Sammat Bai wife of Ramcharan Bharti, aged about 51 years

Appellant 3 to 6 are minor through legal guardian mother Smt. Kamta Bai wife of late Maan Singh

All are R/o Bansakra, Post and Police Station-Simga, Tahsil Simga, District Balodabazar, now resident of Yadunandan Nagar, Tifra, Tahsil and Police Station-Bilaspur C.G.

-----Appellants/Claimants

VERSUS

1. Devnarayan Mahato son of Menchand Mahato, aged about 28 years, resident of Village Kamta Topchhamachhi, District Dhanbad Jharkhand
Probable Address (a) through vehicle Owner Rajendra Prasad son fo S.K. Ram, resident of Birgaon, in front of Akashwani Raipur, Tahsil and District Raipur C.G.
(b) through Vehicle owner Rajendra Prasad son of S.K. Ram, resident of House no. 82, Village Katras Post Katras Bazar, District Dhanbad Jharkhand
2. Rajendra Prasad son of S.K. Ram, resident of Birgaon, in front of Akashwani Raipur Tahsil and District Raipur C.G.
Probable address-House no. 82, village katras, Post Katras Bazar, District Dhanbad, Jharkhand
3. Bajaj Allianz General Insurance Company Limited, through the Branch Manager, Branch Office, Vyapar Vihar near Ashish Automobile, Tahsil and District Bilaspur C.G.
Probable Address-through the Divisional Manager, Second Floor, Shiv Mohan Bhawan, Vidhansabha Road, Pandri, District Raipur C.G.

-----Respondents

For Appellants	: Mr. Goutam Khetrapal, Advocate
For Respondent 1 & 2	: None.
For Respondent 3	: Mr. Aditya Pandey, Advocate on behalf of Mr. Abhishek Sinha, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

11/01/2021

1. Challenge in this appeal is to the award dated 22.09.2014 passed by learned Fourth Additional Member to the First Additional Motor Accident Claims Tribunal, Bilaspur C.G. (for short "Claims Tribunal"), in claim case no. 34/2013 whereby learned Claims Tribunal, while allowing application filed under Section 166 of the Motor Vehicles Act, 1988 (for short "Act of 1988"), awarded Rs. 6,83,000/- as compensation in a fatal accident case.
2. Facts of the case relevant for disposal of this appeal are that, on 21.02.2013, Maan Singh Bharti was going towards Bilaspur on his Tata Magic Iris vehicle (4-wheeler) bearing registration no. CG04TA0839, accompanied with one Vaishkhu Yadav (helper on the vehicle) and his uncle by name Mangal Singh Bharti. When they reached near village Betalpur, one truck bearing registration no. CG04JB4919 (henceforth "offending truck"), coming from Bilaspur, driven by non-applicant 1 rashly and negligently caused accident. In the said accident, vehicle driven by Maan Singh was badly damaged, he along with uncle Mangal Singh and Vaishaku suffered grievous injuries over their person, resulting death of Maan Singh and Vaishaku Yadav. Accident was reported to concerned police station based on which crime was registered against non-applicant 1/ driver of offending truck. Appellants/ claimants who are widow, children and parents of late Maan Singh Bharti filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 34,90,000/-, pleading therein that deceased was earning Rs. 15,000/- per month from driving his passenger vehicle Tata Magic Iris.
3. Non-applicant 1 and 2 did not appear before the Claims Tribunal and were proceeded *ex parte*.

4. Non-applicant 3/ Insurance Company submitted reply to the claim application denying the facts pleaded therein. It was further pleaded that deceased was driving his four-wheeler in intoxicated condition without valid and effective driving licence. There was contributory negligence on the part of deceased. Owner, driver and insurer of Tata Iris were not impleaded as non-applicants, hence, there is non-joinder of necessary party. There was breach of policy conditions as non-applicant 1 /driver of offending truck was not possessed with valid and effective driving licence and was running the offending truck without permit and fitness certificate.
5. Learned Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties, held that Maan Singh Bharti died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending truck by non-applicant 1. Breach of policy conditions was not found to be proved. Upon assessing the income of deceased as Rs. 4,500/- per month, awarded total compensation of Rs. 6,83,000/-.
6. Mr. Goutam Khetrpal, learned counsel for the appellants-claimants submits that the Claims Tribunal erred in awarding meagre amount of compensation. It is contended that the Tribunal assessed the income of the deceased as Rs. 4,500/- per month only, overlooking the fact and evidence available on record that the deceased was owner of Tata Iris passenger vehicle which he purchased on finance. Evidence of AW-1 and documents placed on record showing the purchase of vehicle by the deceased on finance and payment of installments for the same. He further contended that Claims Tribunal erred in not adding any amount towards future prospects as declared by Hon'ble Supreme Court in case of **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and awarding meagre amount of compensation on other conventional heads as held by Supreme Court in cases of **Pranay Sethi**

(supra) and **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in **(2018) 18 SCC 130**.

7. Mr. Aditya Pandey, learned counsel for Respondent 3, submits that, Claims Tribunal, in the facts and circumstances of the case, on appreciation of entire material and evidence, has awarded just amount of compensation which does not call for any interference. He further contended that appellants-claimants failed to place on record any documentary evidence showing the income of the deceased pleaded in the claim application, as such, Tribunal is well justified in assessing the income on notional basis in absence of any admissible piece of evidence.
8. We have heard learned counsel for the respective parties and also perused the record of claim case.
9. Motor Accidental death, insurance of offending vehicle by non-applicant 3/ Insurance Company and liability fastened upon non-applicants jointly and severally, are not in dispute. Appellants-claimants have challenged only the quantum of amount of compensation awarded by the Claims Tribunal. First ground raised by the learned counsel for the appellants with regard to income of deceased as Rs.4,500/- per month assessed by the Claims Tribunal is concerned, we have perused the record of claim case. Claimants have placed on record copy of PAN Card and copy of driving licence of deceased Maan Singh, registration certificate of the vehicle Tata Iris in which class of vehicle has been shown as Motor Cab/Taxi recorded in the name of deceased Maan Singh Bharti. Manufacturing year of the vehicle has been shown as September, 2012. Claimants have also placed on record Tax Invoice showing the net price of vehicle owned by deceased as Rs. 2,31,728/- and payment of amount towards purchase of vehicle as Rs. 35,000/-. Aforementioned documents though available on record were not exhibited. Claimants have placed on record cash receipts towards payment of installments of Rs. 5,860/- per month as Ext. A-10, A-11 and

A-12. From the aforementioned documents as discussed above, claimants have proved that deceased was owner of vehicle Tata Magic Iris and it was being used as 'Motor Cab/ Taxi'. Copy of insurance policy is also available on record in which it is mentioned as 'Commercial Vehicle Passenger Comprehensive Policy'. Claims Tribunal has not considered the fact that deceased was owner of passenger carrying vehicle and was engaged in the business as 'Transporter'. Claims Tribunal in paragraph 17 of the impugned award has assessed income of deceased as Rs. 4,500/- per month, observing that the claimants have not placed on record any document to prove income of deceased.

10. In the facts of the case where deceased was owing a small / light commercial vehicle (Tata Magic Iris) and claimed to be earning Rs. 15,000/- to Rs. 18,000/- per month, the fact that they belong to lower strata of society, merely non-production of document showing the income of deceased itself will not enough for non-consideration of income of deceased taking into consideration other material and evidence available on record. What could not be ignored is the fact that the deceased purchased the vehicle Tata Magic Iris which was registered, insured as 'public service vehicle' which shows that the deceased was doing the business of 'Transportation' by using Public Carriage Vehicle.

11. In view of aforementioned evidence and documents available on record, income of deceased cannot be assessed equal to the income of manual labourer, but income, in absence of evidence, is to be assessed on notional basis taking into consideration overall documents and evidence available on record. The nature of proceeding under the Act of 1988 is an enquiry and there is no strict application of Civil Procedure Code. In view of the above discussion, we are of the view that the Claims Tribunal erred in assessing income of deceased Maan Singh as Rs. 4,500/- per month which can be the income of manual labourer, hence, we find it appropriate

to assess the income of deceased Maan Singh Bharti as Rs. 9,000/- per month. Claims Tribunal has not added any amount in the income of deceased towards future prospects. Award of future prospects is well settled by Hon'ble Supreme Court in case of **Pranay Sethi (supra)**.

12. In the case at hand, deceased was aged about 40 years on the date of accident as mentioned in post mortem report, hence, there shall be addition of 25% of establish income towards future prospects. Claims Tribunal has rightly deducted 1/5th towards personal and living expenses taking into consideration number of dependents and rightly applied multiplier of 15. Claims Tribunal has awarded only Rs. 35,000/- towards other conventional heads which is on lower side in view of the ruling of the Supreme Court in case of **Pranay Sethi (supra)** and **Nanu Ram (supra)**.
13. For the foregoing reason, amount of compensation to be awarded to the claimants requires re-computation and recalculation which is as under.
14. Monthly Income of deceased is assessed as Rs. 9,000/- ie. Rs. 1,08,000/- per annum. Upon adding 25% of established income towards future prospects, total yearly income will come to Rs. 1,35,000/-. Upon deducting 1/5th towards personal and living expenses, yearly loss of dependency will come to Rs.1,08,000/- [Rs.1,35,000- 1/5th of Rs. 1,35,000/-]. Upon applying multiplier of 15 to yearly loss of dependency, total loss of dependency will come to Rs. 16,20,000/- (Rs. 108000x15). In addition to the aforementioned amount of loss of dependency, appellants-claimants are entitled for Rs. 40,000/- towards loss of spousal consortium, Rs. 40,000/- towards parental consortium, Rs. 40,000/- towards filial consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.
15. Now the appellants-claimants will be entitled for total sum of **Rs. 17,70,000/-** (Rs.16,20,000 +Rs.40,000 +Rs.40,000 +Rs.40,000 +Rs.15,000 +Rs.15,000) as compensation instead of Rs. 6,83,000/- as

awarded by the Claims Tribunal. Enhanced amount of compensation shall carry interest @ 7% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the Claims Tribunal shall remain intact.

16. In the result, appeal is allowed in part and the impugned award is hereby modified to the extent as indicate herein-above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge