NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 458 of 2015

1. Smt. Vinita Sharma, now aged about 41 years, wife of Late Rajnish Sharma
2. Shriyansh Sharma, now aged about 14 years, son of Late Rajnish Sharma
3. Shri Jay Sharma, now aged about 13 years, son of Late Rajnish Sharma
4. Ku. Shriyal Sharma, now aged about 20 years,
Respondent No.2 to 3 are minor through Legal guardian mother Smt. Vinita Sharma (appellant No.1)
All R/o 627, Pandari Tarai, P.S. Pandari Tarai, District Raipur Chhattisgarh

---- Appellants

Versus

1. Ravi Roshan @ Bablu Dewangan, aged about 26 years, son of Shri Kesh Kumar Dewangan, R/o Nayapara, Rajim, Kholipara, Near Railway Crossing Nayapara, Raipur District Raipur Chhattisgarh
2. Hem Lal J. Dewangan, son of Jagat Ram Dewangan, R/o College Road, Rajim District Raipur Chhattisgarh
3. The New India Insurance Company Limited, Through Divisional Manager, Divisional Office, Madina Building, Jail Road Raipur, District Raipur Chhattisgarh

---- Respondents

For Appellants	: Shri Raghvendra Pradhan, Advocate
For Respondents 1 & 2	: None
For Respondent No. 3	: Shri N.K. Malviya, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

02.02.2021

1. Appellant/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 30.06.2014 passed

by the Third Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.105 of 2011 whereby learned Claims Tribunal allowed an application filed under Sections 166 and 140 of the M.V. Act in part and awarded Rs.17,79,388/- as total compensation in a fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 23.06.2008, when Rajnish Sharma was travelling on his car at Dhaneli bypass, Kharora road, one Truck bearing No.CG-04/G/8997 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the car of Rajnish Sharma, coming towards wrong side. In the aforementioned accident, car was badly damaged and Rajnish Sharma suffered grievous injuries over his person, he was brought to Dr. B.R. Ambedkar Memorial Hospital, Raipur, where the doctors declared him dead.

3. Appellants/claimants, who are widow and children of late Rajnish Sharma filed an application under Sections 166 and 140 of M.V. Act pleading therein that on the date of accident, deceased was able-bodied person of 38 years, engaged in the business of travel agency as well as he was property dealer/broker and earning Rs.2,50,000/- per annum. Apart from aforesaid, he was having 10 acres of agricultural property at village Gujra from which, he was earning

Rs.50,000/- per annum and claimed Rs.57,50,000/- as total compensation on different heads.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle resisted the claim pleading therein that accident was on account of rash and negligent driving of car by deceased himself; non-applicant No.1 was having valid and effective driving licence; non-applicant No.2 has checked the licence of non-applicant No.1 prior to engaging him as driver of truck; offending vehicle was insured with non-applicant No.3/Insurance Company during the period of accident, hence, liability to satisfy the amount of compensation would be upon non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleadings made therein, pleaded that there was contributory negligence on the part of deceased; non-applicant No.1 was not possessed with valid and effective driving licence; accident was with unknown vehicle, there was breach of policy conditions, hence, Insurance Company may be exonerated.

6. On appreciation of pleadings, evidence and material brought on record by the respective parties, learned Claims Tribunal held that Rajnish Sharma died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1; breach of

policy conditions was not found to be proved; awarded Rs.17,79,388/- as total compensation and fastened liability to satisfy the amount of compensation upon the non-applicants jointly and severally.

7. Shri Raghvendra Pradhan, learned counsel for the appellants/claimants submits that appeal is filed for enhancement of amount of compensation awarded by learned Claims Tribunal. He submits that learned Claims Tribunal has erroneously assessed the annual income of deceased as Rs.1,49,990/-, Tribunal has taken into consideration income tax return (Ex.P/9) but has erroneously deducted the amount shown in computation of total income, which is deducted under Chapter VIA under Section 80C of the Income Tax Act, 1961 for computing the taxable income, which is an erroneous exercise. It is contended that for the purpose of calculating amount of compensation, gross income of deceased has to be taken into consideration less tax. He pointed out that there is specific pleading and evidence on record that there was agricultural property of deceased, but income of agricultural property has not been taken into consideration for the purpose of calculating amount of compensation as income of deceased. Tribunal has erred in not awarding any amount towards future prospects and amount of compensation awarded towards other conventional heads is on lower side. Reliance has

been placed on the verdict of Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130** to buttress his submission.

8. No one appeared on behalf of respondents No.1 and 2.

9. Per contra, Shri N.K. Malviya, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal has taken into consideration the net income mentioned in income tax return (Ex.P/9) for the purpose of calculating amount of compensation. Amount of compensation awarded towards other conventional heads is much on higher side than it has been held by Hon'ble Supreme Court in case of **Pranay Sethi** (supra). It is contended that learned Claims Tribunal has awarded much more amount of compensation in the facts and circumstances of the case.

10. We have heard learned counsel appearing for the respective parties and perused the record carefully.

11. So far as the first submission made by learned counsel for the appellants with regard to income of deceased assessed by learned Claims Tribunal to be on lower side is concerned, perusal of record would show that claimants have placed on

record income tax return of the year 2007-08 (Ex.P/8) and 2008-09 (Ex.P/9) which was submitted on 09.05.2008 prior to the date of accident to prove the income of deceased wherein gross total income of deceased has been shown as Rs.2,09,987/-. Computation of total income is also available as part of Ex.P/9 wherein income from business or profession has been shown as Rs.2,09,987/- and deduction has been shown under Section 80C towards LIP and house loan, totaling to Rs.1,11,513/-. These deductions have been shown for the investment made by Assessee from his total income and exempted from tax under the Income Tax Act, 1961. For the purpose of calculating amount of compensation, gross total income of deceased is to be taken into consideration minus income tax paid by him. In the income tax return (Ex.P/9), gross total income of deceased has been shown as Rs.2,09,987/-.

12. So far as the second submission made by learned counsel for the appellants with regard to agricultural income is concerned, deceased has left the property behind him and appellants can very well manage the property as deceased was managing during his lifetime by staying at Raipur whereas agricultural property as per revenue record has been shown to be in village Gujra, Block Aarang, District Raipur. In view of above, we are of the considered opinion that income of deceased can be reckoned as Rs.2,09,987/-

based on the income tax return (Ex.P/9) only. It is ordered accordingly.

13. Learned Claims Tribunal has not awarded any amount towards future prospects. On the date of accident, deceased was shown to be in the age group between 41-45 years and not in permanent employment, hence, there will be an addition of 25% of established income towards future prospects in the income of the deceased for the purpose of assessing his total income as per law laid down by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra).

14. So far as the next submission made by learned counsel for the appellants that learned Claims Tribunal has awarded meagre amount of compensation towards other conventional heads is not sustainable. The Hon'ble Supreme Court has explained the heads under which compensation to be awarded towards other conventional heads. Apex Court has specified loss of consortium, loss of estate and funeral expenses only to be awarded under other conventional heads and except above three heads, no other heads have been mentioned to be awarded under other conventional heads. In the case at hand, learned Claims Tribunal has awarded Rs.2,22,500/- on other conventional heads, which in view of dictum of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Nanu Ram alias Chuhru Ram** (supra) is on higher side, which is required to be scaled

down as this Court is recomputing the amount of compensation.

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

The annual income of deceased is taken as Rs.2,09,987/-. By adding 25% of the income towards future prospects, the total annual income of deceased will come to Rs.2,62,484/- (2,09,987 x 25% = 52,496.75 (rounded off to Rs.52,497 and 2,09,987 + 512,497). For the purpose of computing compensation, net income is to be taken, which means gross income – income tax. The income tax slab of the year 2008-09 is as under :

Upto Rs.1,10,000	-	Nil
Rs.1,10,000 to 1,50,000	-	10% of the amount exceeding 1,10,000
Rs.1,50,000 to 2,50,000	-	Rs.4,000 + 20% of the amount exceeding 1,50,000
Rs.2,50,000 and above	-	Rs.24,000 + 30% of the amount exceeding 2,50,000

Total income of the deceased has to be assessed as Rs.2,62,484/-. On income of Rs.2,50,000/-, income tax as per slab is Rs.24,000/- and in balance income of Rs.12,484/- income tax will payable at the rate of 30%, which comes to

Rs.3,745.2 (30% of 12,484/-), rounded off to Rs.3,745/-. Total tax payable on income of Rs.2,62,484/- is Rs.27,745/- (24,000 + 3,745). Net income of deceased was Rs.2,34,739/- (2,62,484 – 27,745). The deceased was survived by widow and three children, therefore, there will be a deduction of 1/4th towards his personal and living expenses i.e. Rs.58,684.75 rounded off to Rs.58,685/- in view of the case law of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121.** Annual dependency of appellants will be Rs.1,76,054/- (2,34,739 – 58,685). After applying the multiplier of 14, total loss of dependency comes to Rs.24,64,756/- (1,76,054 x 14).

Apart from the above amount of compensation, the appellants are entitled for a sum of Rs.40,000/- towards parental consortium (payable to children because of the death of parent) and Rs.40,000/- towards spousal consortium (payable to the spouse because of the death of the partner) in view of law laid down by Hon'ble Supreme Court in the matter of **Nanu Ram alias Chuhru Ram** (supra). The claimants are also entitled for a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses.

16. Now, the appellants/claimants are entitled for total compensation of Rs.25,74,756/- (24,64,756 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.17,79,388/- as awarded by learned Claims Tribunal. This amount of

compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Other conditions imposed by the learned Claims Tribunal shall remain intact.

17. In the result, appeal is allowed in part. The impugned award is modified to the extent as indicated herein above.

Sd/-	Sd/-
(P. R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Yogesh