NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 670 of 2015

1. Smt. Nirmala Devi Sahu wife of late Umakant Sahu, aged about 36 years
2. Kumari Neha daughter of late Umakant Sahu, aged about 10 years
3. Kumari Himarani daughter of late Umakant Sahu, aged about 07 years
4. Chandrakant Son of late Umakant Sahu, aged about 5 years

   Appellant 2 to 4 are minors through legal guardian Smt. Nirmala Devi Sahu wife of Umakant Sahu
5. Lakhan Lal Sahu son fo Sadhram Sahu, aged about 69 years
6. Smt. Adhin Kunvar wife of Lakhan Lal Sahu [DELETED]

   All resident of Village Basant pur, Tahsil Janjgir, District Janjgir Champa Chhattisgarh

---Appellants

VERSUS

1. Sitaram Kenwat son of Jodhan Kenwat, aged about 26 years R/o village Dipripara, Birgahni, Tahsil Janjgir District Janjgir-Champa Chhattisgarh **------Driver**
2. Smt. Meena Sahu wife of Kanhaiya Lal Sahu, aged about 40 years, resident of near Gayatri mandir, Birgahni, Tahsil Janjgir-District Janjgir Champa Chhattisgarh **-----Owner**
3. The New India Insurance Company Ltd. through Divisonal Manager New India Insurance Company Transport Nagar Korba, District Korba Chhattisgarh

----Respondents

For Appellants	:	Mr. Shobhit Koshta, Adv. on behalf of Mr. Vishnu Koshta, Advocate
For Respondent 3	:	Mr. Sudhir Agrawal, Advocate

(*proceedings through Video Conferencing)*

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

12/08/2021

1. Claimants have preferred this appeal under Section 173 of the

Motor Vehicles Act, 1988 (for short "Act of 1988") challenging the impugned award dated 30.01.2015 passed by learned Third Additional Motor Accident Claims Tribunal, Janjgir-Champa, C.G. (for short "Claims Tribunal") in claim case no. 12/2014, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 in part, awarded Rs. 3,94,000/- as total compensation with interest @ 9% p.a. and fastened liability to satisfy the amount of compensation on non-applicants therein jointly and severally.

2. Facts relevant for disposal of this appeal are, that Umakant Sahu was returning on Bolero vehicle bearing registration number CG11 E 0565 (henceforth "offending vehicle") along with his family members after getting treatment of his son Chandrakant Sahu. When the offending vehicle reached near village Khaira, it met with an accident in which Umakant Sahu suffered grievous injuries along with his family members. Umakant succumbed to injuries suffered by him. Accident was reported to concerned police station based upon which crime bearing no. 87/2012 was registered against non-applicant 1/ Respondent 1/ Driver of offending vehicle.

3. Claimants who are widow wife, children and parents of deceased Umakant filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 46,95,000/- pleading therein that the deceased on the date of accident was doing the work of photographer and earning Rs. 15,000/- per month, claimants were dependents upon the income of deceased.

4. Non-applicants 1 and 2 did not appear before the Claims Tribunal

and were proceeded ex parte.

5. Non-applicant 3/ Insurance Company submitted reply to the claim application, resisting the claim application, it was further pleaded that the amount of compensation is highly exaggerated. Non-applicant 1 was not possessed with valid and effective driving licence, as such, there was breach of policy conditions.

6. Learned Claims Tribunal, upon appreciation of pleadings and evidence brought on record by the respective parties, held that Umakant died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant 1. Non-applicant 1 was possessed with valid and effective driving licence at the time of accident and there was no breach of policy conditions; awarded Rs. 3,94,000/- as total compensation and fastened liability upon non-applicants jointly and severally.

7. Mr. Shobhit Koshta, learned counsel for the appellants/ claimants would submit that the Claims Tribunal erred in assessing income of deceased on the date of accident. He submits that documents Ext. A-18 & A-19 are placed on record to show that the appellants have taken shop on rent for his work of photography. Ext. A-21, income tax return of the year 2002, is placed on record showing income of deceased as Rs. 50,000/- per annum. Tribunal erred in assessing income as mentioned in ITR of 2002 as Rs. 50,000/- only in the year 2012. Tribunal ought to have assessed the income by increasing the amount from year 2001 to 2012, hence the assessment of income of Rs. 50,000/- per annum is not sustainable. In alternate, learned counsel submits that even if the appellants/ claimants failed to produce the admissible

documentary and oral evidence with regard to income of deceased on the date of accident, learned Claims Tribunal ought to have assessed income on notional basis taking into consideration the nature of occupation, date of accident, wage structure, cost of living etc. He submits that the Claims Tribunal ought ot have assessed the income @ Rs.5,000/- per month. He further submits that the Tribunal has deducted 1/3rd towards personal and living expenses overlooking the number of dependents/ claimants. In view of ruling of Hon'ble Supreme Court in case of ***Sarla Verma & others v. Delhi Transport Corp. & anr.*** reported in ***(2009) 6 SCC 121,*** appropriate deduction of 1/4th ought to have been applied. On the date of accident deceased was aged about 43 years of age, hence, in view of ruling of Supreme Court in **Sarla verma (supra)** appropriate multiplier should have been 14 but the Tribunal has applied the multiplier of 11 which is also not sustainable. The Tribunal has not awarded any amount towards future prospects as held by the Supreme Court in case of ***National Insurance Company Ltd. v. Pranay Sethi*** reported in ***(2017) 16 SCC 680***. He submits that atleast 25% of the established income should have been added for future prospects for computing the total income of deceased on the date of accident. He lastly submits that the Tribunal has not awarded proper amount of compensation on other conventional heads, total Rs. 20,000/- is awarded on other conventional heads of which Rs. 5,000/- towards funeral expenses, Rs. 5,000/- towards loss of spousal consortium, Rs. 6,000/- towards loss of love and affection to three children @ Rs. 2,000/- each and Rs. 4,000/- towards love and affection to parents

@ Rs. 2,000/- each. He also pointed out that the loss of consortium is to be awarded in view of ruling of Supreme Court in case of ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in ***(2018) 18 SCC 130*** and ***United India Insurance Co. Ltd. v. Satinder Kaur and others*** reported in **2020 SCC OnLine 410**.

8. Mr. Sudhir Agrawal, learned counsel for Respondent-Insurance Company would submit that the Claims Tribunal has awarded just amount of compensation which does not call for any interference. He submits that in absence of any specific documentary evidence showing income of deceased on the date of accident, Claims Tribunal has taken into consideration the income of deceased as Rs. 50,000/- per annum which is on higher side. Document Ext. A-21 is not the income tax return but application. In alternate, he submits that even if the submission of learned counsel for the appellants is accepted that the deceased was doing skilled work of photography then also as per the minimum wages prevailing during the period of 01.10.2011 to 31.10.2012, the monthly wages has been notified as Rs. 4719/- per month only.

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

10. Sofar as, the submission of learned counsel for the appellant with regard to income of deceased assessed by the Tribunal as Rs. 50,000/- per annum, learned Tribunal in paragraph 13 of the award has considered Ext. A-21 mentioning it to be the income tax return showing income as Rs. 50,000 /- per annum. Perusal of Ext. A-21 would show that it is not the income tax return but only

the application for allotting Permanent Account Number submitted on 19.02.2002, the figure of Rs. 50,000/- is mentioned showing the undertaking of the application that he will be liable for assessment of the tax if the income exceeds to Rs. 50,000/-. In view of the above, learned Claims Tribunal erred in accepting Ext. A-21 as an income tax return, the finding recorded with respect to Ext. A-21 is perverse, it is not sustainable and it is hereby set aside. In view of above appellants have not brought on record any admissible piece of evidence to prove income of the deceased as such income of deceased is to be assessed on notional basis. Notional income is to be assessed taking into consideration the date of accident, nature of occupation of deceased, wage structure, cost of living and price index.

11. The submissions made by learned counsel for the respondent-insurance Company with respect to minimum wages for the skilled labourer is not disputed by learned counsel for appellants, hence, I find it appropriate to assess the income of Rs. 4720/- as monthly income of deceased. Tribunal has not added any amount towards future prospects in the income of deceased. The Supreme Court in the case of **Pranay Sethi (supra)** has considered the award of future prospects and held that addition of 25% of the established income towards future prospects where the deceased was not in permanent employment or self-employed and in between 40-50 years age. On the date of accident deceased was aged about 43 years, as such, there shall be addition of 25% of the established income to the income of deceased for assessing total income of deceased on the date of accident. Claims Tribunal has applied the deduction of 1/3rd and

multiplier of 11, Hon'ble Supreme Court in the case of **Sarla Verma (supra)** has considered the issue of deduction towards personal and living expenses of deceased and application of multiplier. In the case at hand, the number of claimants are 5 on the date of passing of award as the mother of deceased died during the pendency of claim application. In view of law laid down by Supreme Court in case of **Sarla Verma (supra)**, deduction towards personal and living expenses should be 1/4th instead of 1/3rd and the multiplier should be 14 instead of 11. It is ordered accordingly.

12. The Tribunal has awarded only Rs. 20,000/- towards other conventional heads, Hon'ble Supreme Court in case of **Pranay Sethi (supra)** has clarified as to on which heads the amount of compensation on other conventional heads can be awarded and further quantified the amount of compensation on those heads. Hon'ble Supreme Court has held the award of compensation on other conventional heads to be on the head of loss of consortium, loss of estate and funeral expenses. Different types of consortium is explained by Hon'ble Supreme Court in case of **Nanu Ram alias Chuhru Ram (supra)** ie. the loss of spousal consortium, loss of parental consortium and loss of filial consortium. The appellant shall be entitled for amount of compensation on those heads.

13. In view of the above, the amount of compensation to be awarded to the claimants requires recalculation and recomputation which is as under.

14. Income of the deceased is assessed as Rs.

4720/- per month ie. Rs. 56640/- per annum. By adding 25% of the established income in the income of deceased, yearly income of deceased will come to Rs.70,800/- [Rs.56640 x 25% of Rs.56640]. After deducting 1/4th towards personal and living expenses, loss of yearly dependency will come to Rs. 53,100/- [Rs.70800-1/4th of Rs.70800]. After applying appropriate multiplier of 14, total loss of dependency will come to Rs. 7,43,400/- [Rs.53100x14]. Apart from this, appellants-claimants shall also be entitled for 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 funeral expenses and Rs. 15,000/- towards loss of estate.

15. Accordingly, appellants shall be entitled for **Rs. 8,93,400/-** [Rs.7,43,400+ Rs.40,000+ Rs.40,000+ Rs.40,000+ Rs.15,000+ Rs.15,000] as total compensation instead of Rs. 3,94,000/-. The amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till its realization. The liability to satisfy the amount of compensation is upon non-applicants/ Respondents jointly and severally.

16. 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

Pawan