NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1457 of 2015

1. Smt. Anita Jaiswal W/o Late Amit Kumar Jaiswal, Aged About 28 Years
2. Kumari Nabya Jaiswal D/o Late Amit Kumar Jaiswal, Aged About 4 Years Minor Through Her Legal Guardian Mother Smt. Anita Jaiswal W/o Late Amit Kumar Jaiswal

   Both R/o village through Babulal Jaiswal Ward No.21 Manendragarh, Tahsil Manendragarh, District Koriya, Chhattisgarh ....Claimants

---- Appellants

Versus

1. Vijay Singh S/o Babulal Singh Gond, Aged About 25 Years Occupation- Driver, R/o Village Vishunpur, Thana and Tahsil Surajpur, District Surajpur, Chhattisgarh (Driver Of The Offending Vehicle Tractor No. C.G.10 T R 2256- 12)
2. Sunil Kumar Pandey, S/o Vishnuprasad Pandey, Aged About 38 Years, R/o Ramanuj Nagar, Thana Ramanujnagar, District Surajpur, Chhattisgarh (Owner Of The Offending Vehicle Tractor No. C.G.10 T R 2256. - 12)
3. Iffco Tokiyo General Insurance Company Ltd. Through Branch Manager 3rd Manjil Shop No. 354/347, Lalganga Shopping Mall G.E. Road Raipur, Chhattisgarh (Insurer Of The Offending Vehicle Tractor No. C.G.10 T R 2256. - 12)
4. Suman Jaiswal W/o Late Vijay Kumar Jaiswal, Aged About 54 Years R/o Village Ghadi Chowk Baikunthpur, District Koriya, Chhattisgarh (Mother)

---- Respondents/Non-Applicants

For Appellants	:	Shri AL Singroul, Advocate
For Respondents- 1 and 2	:	None appears
For Respondent-3	:	Shri Tessy Abraham, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

05.08.2021

1. This appeal under Section 173 of Motor Vehicle Act, 1988 filed by the claimants challenging the impugned award dated 03.08.2015 passed by 2nd Additional Motor Accident Claims Tribunal, Manendragarh (For short, 'Claims Tribunal') in Claim Case No.02 of 2013 whereby learned Claims Tribunal allowed application under Section 166 r/w 140 of the Act

of 1988 in part and awarded Rs.8,03,500/- as compensation in a fatal accident death case.

2. Facts relevant for disposal of this appeal are that on 24.01.2012 at about 3.30 pm, Amit Kumar Jaiswal (since deceased) was returning to Ramanuj Nagar on his Motorcycle. While so, when he reached near Dugupara, he received a phone call upon which he parked his Motorcycle on side of road and started talking on mobile phone. At that time, one Tractor bearing No.CG 10/TR 2256-12 (hereafter, referred to as 'offending vehicle') driven by its Driver, NA1 rashly and negligently, dashed Motorcycle on which Amit Kumar Jaiswal was sitting and caused accident. In the said accident, Amit Kumar Jaiswal fell down on road and offending vehicle ran over him. He suffered severe injuries over his person and died on the spot.

3. Appellants / claimants, who are widow, children and mother of deceased filed an application under Section 166 of this act of 1988 seeking compensation of Rs.36,02,500/- pleading therein that on the date of accident, deceased was aged about 30 years, running medical store, cloth store and also doing agriculture work. He was earning Rs.40,000/- per month and claimants are dependant upon income of deceased.

4. NA1 and 2, Driver and Owner of offending vehicle submitted reply to claim application, denying claim of the appellants, except admitted facts. It was further pleaded that amount of compensation claimed is highly exaggerated, it is the deceased himself, who was sitting on his Motorcycle negligently and fell down. Offending vehicle was insured with NA3,

Insurance Company, hence, liability if any, would be upon Insurance Company for payment of amount of compensation.

5. NA3 / Insurance Company also submitted its separate reply denying the facts pleaded therein Claim application. It was pleaded that deceased himself was negligent on his part for cause of accident. He himself parked Motorcycle negligently and fell down on road. Driver of offending vehicle was not possessed with valid and effective driving license to drive offending vehicle, as such, there was breach of Policy conditions.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that late Amit Kumar Jaiswal died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA1; breach of policy conditions were not found to be proved; upon assessing income of deceased as Rs.3,000/- per month, added 50% amount towards future prospects and further by awarding amount of compensation on other conventional heads, awarded total compensation of Rs.8,03,500/- with interest @ 6% from the date of filing of claim application till its realisation.

7. Shri AL Singroul, learned counsel for the appellants submits that learned Tribunal erred in awarding meagre amount of compensation. He submits that appellants/claimants have pleaded in their application that deceased was engaged in medical store, cloth store and also doing agriculture work and earning Rs.40,000/- per month and similar statement is made by them in evidence, but learned Claims Tribunal ignoring pleading and evidence brought on record by the appellants/claimants,

assessed income of deceased as Rs.3,000/- per month only. In alternate he submits that even if for any reason, income of deceased as pleaded and stated by appellants in their evidence is not accepted, then also, learned Claims Tribunal ought to have assessed Notional Income, based upon date of accident, wage structure, cost of living. He further pointed out that learned Claims Tribunal has not awarded any amount of compensation on other conventional heads with respect to loss of consortium, funeral expenses and loss of estate appropriately. Amount of compensation be re-calculated and to be enhanced suitably.

8. No one appeared on behalf of respondents- 1, 2 and 4.

9. Shri Tessi Abraham, learned counsel appearing on behalf of Shri Amrito Das, learned counsel for the Insurance Company/respondent-3 would submit that appellants/claimants except pleadings and oral submissions, have not placed any documentary evidence to show that deceased was running medical store, cloth store and also earning from his agriculture fields. He submits that in absence of any documentary or admissible piece of evidence with regard to occupation of deceased, learned Claims Tribunal justified in assessing his income on notional basis @ Rs.3,000/- per month. He further pointed out that learned Claims Tribunal has added future prospects on higher side ie 50% of established income of deceased, instead of 40% as held by Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others reported in** (2017) 16 SCC 680**.** He further pointed out that similarly, amount awarded by learned Claims Tribunal on other conventional heads is also much more than what has been held by

Hon'ble Supreme Court in **Pranay Sethi** (supra). He submits that amount of compensation awarded to claimants is just and proper, which does not call for any interference.

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

11. Appellants/claimants in their claim application, have pleaded occupation of deceased of running medical shop and cloth shop as also agriculture work. Appellant-1 even has made similar statement in her evidence with regard to occupation of deceased, but no document of running medical shop or cloth shop is placed on record except pleading and oral evidence of appellant-1, wife of deceased. In absence of any cogent and reliable piece of evidence with respect to nature of occupation of deceased, submission of learned counsel for the appellants could not be accepted that deceased on the date of accident, was earning Rs.40,000/- from his medical and clothing shop, as well as agriculture activities. In such a situation, income of deceased is to be assessed on notional basis keeping in mind date of accident, age of deceased, wage structure and cost of living etc. In case at hand, date of accident was on 24.01.2012 and deceased was aged about 30 years. Hence, even if presuming occupation of deceased to be manual labourer, then also, looking to his age, liability to maintain his family including wife, children and mother, in opinion of this Court, income of deceased can be assessed as Rs.4,500/- per month and Rs.54,000/- per annum. It is ordered accordingly.

12. So far as addition of future prospects in income of deceased for the purpose of calculation of yearly income is concerned, Hon'ble Supreme Court has settled the issue of award of future prospects in case of **Pranay Sethi** (supra), and held that where deceased was below 40 years of age, and not in permanent employment, there shall be addition of 40% of his established income towards future prospects. If in an appeal filed by the claimants, this Court is considering the amount of compensation awarded by Claims Tribunal to be just and proper or not, the addition of 50% towards future prospects of established income by learned Claims Tribunal requires to be appropriately considered and therefore, there shall be addition of only 40% of established income towards future prospects instead of 50% as added by learned Claims Tribunal.

13. Learned Claims Tribunal has rightly deducted $1/3^{rd}$ towards personal and living expenses but have awarded amount of compensation on other conventional heads on higher side. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others,** (2018) 18 SCC 130 held that as to what are the heads to be considered for award of compensation on other conventional heads and also fixed the amount under those heads. Appellants/claimants shall be entitled for amount of compensation on other conventional heads as held by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Nanu Ram** (supra).

14. Claims Tribunal has applied multiplier of 16, whereas looking to age of deceased on the date of accident, appropriate multiplier shall be 17 hence, it is ordered accordingly.

15. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires re-computation and re-calculation which is as under:

(a) Income of deceased has been taken as Rs.4,500/- per month and Rs.54,000/- per annum.

(b) By adding 40% of established income of the deceased, yearly income of the deceased comes to Rs.75,600/- {54000 + (54000 x 40/100)}.

(c) After deducting 1/3rd from the actual income of deceased towards personal and living expenses, annual loss of dependency comes to Rs.50,400/- {75600 — (75600 x 1/3)}.

(d) Upon applying multiplier of 17 to the annual loss of dependency, total loss of dependency comes to Rs.8,56,800/- (50400 X 17).

(e) Apart from above, claimants are further entitled for Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards parental consortium, Rs.40,000/- for filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

16. Now the appellants/claimants are entitled for a total sum of **Rs.10,06,800/-** (856800 + 40000 + 40000 + 40000 + 15000 + 15000) as compensation instead of Rs.8,03,500/-, awarded by learned Claims Tribunal. The amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

17. Appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma