

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1169 of 2015**

1. Smt. Rukhmani Bai Satnami Wd/o Late Baura @ Bawra, Aged About 26 Years
2. Ku. Sandhya Satnami D/o Late Baura @ Bawra Satnami Aged About 6 Years
3. Dadu Satnami S/o Late Baura @ Bawra Satnami, Aged About 5 Years
4. Kumari Pinky Satnami D/o Late Baura @ Bawra Satnami, Aged About 3 Years

Appellants- 2 to 4 are minors, through their natural guardian mother Smt Rukhmani Bai Satnami, Wd/o Late Baura Satnami

5. Smt. Laxmin Bai W/o Anturam Satnami Aged About 50 Years
6. Anturam Satnami S/o Late Banau Ram, Aged About 55 Years

All are R/o Nakapara, Lodhipara, Police Station Sarkanda, Tahsil And District Bilaspur Chhattisgarh.....Claimants **---- Appellants**

Versus

1. Mahboob Khan S/o Anwar Khan, R/o Nearby Adarsh Chowk, Police Station Civil Line, Tahsil And District Bilaspur CG 495001(Driver Of Alleged Vehicle Truck Bearing Regn No. M H 04-P- 8876, CG
2. Firoz Ali S/o Nazar Ali R/o Nearby Mangla Chowk, PS Civil Line, Tahsil And District Bilaspur CG 495001(Registered Owner Of Alleged Vehicle Truck Bearing Regn No.MH-04-P-8876
3. Shriram General Insurance Company Limited Through - Chief Manager, Head Office, E-8, EPIRLICO, Sitapur Jaipur Rajasthan 302202 (Insurer Of Alleged Vehicle Truck Bearing Regn No.MH-04-P-8876

---- Respondents/Non-Applicants

For Appellants	: Shri Anil Gulati, Advocate
For Respondents- 1 and 2	: Ms Astha Sharma, Advocate on behalf of Shri Goutam Khetrpal, Advocate
For Respondent-3	: Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

30.09.2021

1) Claimants have preferred this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 28.02.2015 passed by the First Motor Accident Claims Tribunal, Bilaspur (For short, 'Claims Tribunal') in Claim Case No.81 of 2012, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in

part, awarded Rs.6,88,000/- as total compensation in a fatal accident case.

2) Facts relevant for disposal of this appeal are that on 29.06.2012, Baura @ Bawra Satnami (since deceased) when returning after answering nature call, reached near Agriculture University on Ratanpur-Bilaspur road, one Truck bearing No.MH 04P-8876 (hereafter, referred to as 'offending vehicle') driven by NA1 rashly and negligently, dashed Baura @ Bawra Satnami and caused accident. In the accident, Baura @ Bawra Satnami suffered grievous injuries over his person and died on the spot.

3) Claimants, widow, Children and parents of deceased filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.12,00,000/- against death of late Baura @ Bawra Satnami, pleading therein that on the date of accident deceased was working as labourer and earning Rs.200-300 per day.

4) NA1 and NA2, Driver and Owner of offending vehicle submitted reply to claim application denying the pleadings made in claim application. It was further pleaded that accident was result of self negligence of deceased, driver was possessed with valid and effective driving license on the date of accident and offending vehicle was insured with NA3, Insurance Company.

5) NA3/Insurance Company submitted reply to claim application denying the facts pleaded therein. It was further pleaded that NA1 was not possessed with valid and effective driving license. There was breach

of policy conditions, hence, Insurance Company is not liable to indemnify the insurer.

6) Learned Claims Tribunal on appreciation of pleadings and evidence brought on record, held that deceased Baura @ Bawra Satnami died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by NA1, breach of policy conditions was not found to be proved, assessed income of deceased as Rs.4,500/- per month, and awarded Rs.6,88,000/- as compensation.

7) Shri Anil Gulati, learned counsel for appellants would submit that learned Claims Tribunal erred in awarding meagre sum of compensation. He submits that looking to nature of work of deceased, and date of accident, Tribunal ought to have assessed Rs.6,000/- per month. Tribunal not awarded any amount of compensation towards future prospects and awarded meagre sum on other conventional heads of Rs.40,000/- only. In support of his contention for enhancement of amount compensation, he placed reliance upon judgments passed by Hon'ble Supreme Court in cases of **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121, **National Insurance Company Vs Pranay Sethi** reported in **2017 16 SCC 680** and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others**, (2018) 18 SCC 130.

8) Ms Astha Sharma, learned counsel appearing on behalf of Shri Goutam Khetrapal, counsel for respondents- 1 and 2 supports the impugned award.

9) Shri Deepak Gupta, learned counsel for respondent-3 /Insurance Company submits that amount of compensation awarded by learned Claims Tribunal is just and proper in the facts and circumstances of the case and does not call for any interference. He further submits that Tribunal rightly reckoned income of deceased as Rs.4,500/- per month, on notional basis as appellants failed to prove income of deceased by placing documentary or admissible piece of evidence before the Tribunal.

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

11) Appellants though pleaded income of deceased as Rs.200-300 per day, but had not brought any admissible piece of evidence with regard to nature of specific work in which deceased was engaged, nor any documentary evidence, showing income of deceased. In the pleadings and evidence, appellants have mentioned occupation of deceased as Labourer. Accident was of 29.06.2012 and age of deceased as appearing from record was 35 years. Considering date of accident, age and occupation of deceased, in the opinion of this Court, learned Tribunal has not committed any error in assessing income of deceased as Rs.4,500/- per month. Finding of Tribunal with regard to income of deceased is affirmed.

12) Learned Tribunal has not awarded any amount towards future prospects. Award of future prospects is considered by Hon'ble Supreme Court in case of **National Insurance Company Vs Pranay Sethi** reported in **2017 16 SCC 680**, wherein it is held that if the deceased /victim is less

than 40 years of age, and is not in permanent employment or is self employed, then, there shall be addition of 40% of his/her established income towards future prospects. In the case at hand, deceased was 35 years of age. Hence, there shall be addition of 40% of established income of deceased. It is ordered accordingly.

13) Award of compensation on other conventional heads was also considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and specified the heads as also quantified the amount of compensation on each head, which are loss of consortium, loss of estate and funeral expenses. Hon'ble Supreme Court in case of **Magma General Insurance Company** (supra) has further explained types of loss of consortium to be of three types ie loss of spousal consortium, loss of parental consortium, loss of filial consortium.

14) Claimants shall be entitled for compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

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

- a) Income of deceased is taken as Rs.4,500/- per month and Rs.54,000/- per annum.
- b) By adding 40% of established income of the deceased towards future prospects, yearly income of the deceased comes to Rs.75,600/- {54000 + (54000 x 40/100)}.

- c) Upon deducting $1/4^{\text{th}}$ from the total income of deceased towards personal and living expenses, annual loss of dependency comes to Rs.56,700/- {75600 — (75600 x $1/4$)}.
 - d) Upon applying multiplier of 16 to the annual loss of dependency, total loss of dependency comes to Rs.9,07,200/- (56700 X 16).
 - e) Apart from above compensation towards loss of dependency, claimants are further 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 loss of estate and Rs.15,000/- towards funeral expenses.
- 16) Now, appellants/claimants will be entitled for **Rs.10,57,200/-**, (907200 + 40000 + 40000 + 40000 + 15000 + 15000) as compensation instead of Rs.6,88,000/- awarded by the Tribunal.
- 17) Aforementioned amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization.
- 18) In the result, appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE