NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

MAC No. 407 of 2016

1. Smt. Najma Wd/o Late Shri Sabbir Vanak, aged about 44 years
2. Ku. Sara, D/o Late Shri Sabbir Vanak, aged about 22 years
3. Ku. Aravi D/o Late Shri Sabbir Vanak, aged about 18 years
   All R/o H.Wing Flat-5, Jwali Nala, Mohammadi Bag, Bilaspur, District Bilaspur Chhattisgarh.

---- Appellants

Versus

1. Surendra Singh Padda S/o Shri Karnal Singh Padda, R/o Room No.1837, 865, Group No.7, Vikroli Taigor East, Mumbai, Police Station Vikroli, Mumbai, Maharashtra.
2. Najar Singh S/o Shri Jeet Singh, R/o Amarawati Road, Wardi, Nagpur (East Nagpur), Maharashtra.
3. The National Insurance Company Limited, Vardhman Nagar, Branch 10, Vardhman Nagar, Purana Bhandara Road, Vardhman Nagar, Nagpur, Maharashtra.
4. Naresh Vinod Raj Makim, Through Kamanwala Niwas, Agasi Road, C-9, Kamanwala Niwas, Agasi Road, Virat (West), Thane, Maharashtra Pin No.491303.
5. The Reliance Insurance Company Limited, Abhilahi, Second Floor, S.B. Road, Boriwali (West), Mumbai.

---- Respondents

For Appellants	: Shri Jitendra Gupta, Advocate
For Respondents 1 & 2	: None
For Respondent No.3	: Ms. Astha Sharma, Advocate on behalf of Shri Goutam Khetrapal, Advocate
For Respondent No.4	: None
For Respondent No.5	: Shri Sourabh Sharma, Advocate

(Proceedings through Video Conferencing)

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

27.08.2021

1. Appellants/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 25.01.2016 passed by the First Motor

Accident Claims Tribunal, Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.146 of 2010 whereby learned Claims Tribunal allowed an application filed under Section 166 of the M.V. Act in part and awarded Rs.5,50,800/- as total compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, on 02.05.2009, Sabbir Vanak along with others were travelling in Tavera vehicle bearing No. MH-04/CM/9722 and returning to Bilaspur from Saharanpur. While so, when they reached near village Sabli (B), it met with an accident with one Truck bearing No.PB-29/G/9846 (hereinafter referred to as 'offending vehicle'), which was parked on road. In the accident, Sabbir Vanak died. Incident was intimated to concerned Police Station, based upon which, Crime No.60 of 2009 was registered against non-applicant No.1 (driver of offending vehicle).

3. Appellants/claimants who are widow and children of Late Sabbir Vanak filed an application under Section 166 of M.V. Act before the Claims Tribunal seeking compensation of Rs.33,60,000/- on different heads pleading therein that on the date of accident, deceased was an able-bodied person, aged about 45 years, engaged in trading of scrap goods and earning Rs.10,000/- per month. It was further pleaded that on account of untimely death of Sabbir Vanak, they

have suffered loss of dependency.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle, did not choose to appear before learned Claims Tribunal and were proceeded *ex parte*.

5. Non-applicant No.3/Insurance Company submitted reply, resisting the claim, it was further pleaded that documents of both the vehicles i.e. Tavera and Truck were not produced. On the date of accident, non-applicant No.1 was not possessed with valid and effective driving licence and accident was a result of rash and negligent driving of Tavera vehicle by its driver. There was contributory negligence of drivers of both the vehicles, amount of compensation claimed is highly exaggerated and non-applicants No.1 to 3 are not liable to satisfy the amount of compensation.

6. Non-applicant No.4/owner of Tavera vehicle submitted reply to claim application and pleaded that Tavera vehicle was sold to one Yusuf Ali Akhtar. On the date of accident, Tavera vehicle was insured with non-applicant No.5. Purchaser of Tavera vehicle is not impleaded as party non-applicant, hence, there was non-joinder of necessary party.

7. Non-applicant No.5/Insurer of Tavera vehicle submitted reply to claim application and pleaded that it is the non-applicant No.1 who was responsible for accident. Truck was parked on public road without there being any sign or indication. Tavera vehicle was being insured as private vehicle, but at the time of accident, 11-12 persons

were travelling on it and it was being used as 'Taxi', hence, there was breach of policy conditions.

8. On appreciation of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that accident was a result of rash and negligent driving of both the vehicles, Sabbir Vanak died on account of motor accidental injures, breach of policy conditions was not found to be proved, after recording a finding of contributory negligence, awarded Rs.5,50,800/- as total compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization and fastened the liability to satisfy the amount of compensation upon non-applicants No.3 and 5 (insurer of both the vehicles) jointly and severally.

9. Shri Jitendra Gupta, learned counsel for the appellants/claimants would submit that learned Claims Tribunal erred in awarding meagre sum of compensation. Income of deceased assessed as Rs.4,700/- per month is much less than the income of deceased proved by claimants by placing acknowledgment of income tax returns (Ex.P/6 and Ex.P/7). Claims Tribunal erroneously disbelieved the income tax returns (Ex.P/6 and Ex.P/7) on technical grounds. It is pointed out that Claims Tribunal has not awarded any amount of compensation towards future prospects and compensation awarded on other conventional heads is also on lower side. He submits that compensation to be awarded to the claimants be suitably enhanced

considering the income of deceased as mentioned in income tax returns (Ex.P/6 and Ex.P/7).

10. Per contra, Ms. Ashta Sharma and Shri Sourabh Sharma, learned counsel representing the respondents No.3 and 5 respectively would jointly submit that learned Claims Tribunal in paragraph-18 of impugned award has discussed for not considering income tax returns (Ex.P/6 and Ex.P/7) to be declared income of deceased. PAN number, which is mentioned in PAN card of deceased (Ex.P/8) is different than what is mentioned in income tax returns (Ex.P/6 and Ex.P/7). Income tax return appears to be of some other person holding PAN card of PAN number and PAN number which is mentioned in PAN card of deceased, no income tax return is placed on record. Claims Tribunal in absence of prove of income justified in assessing income of deceased considering the minimum wages prevailing on the date of accident, which cannot be said to be erroneous. It is further submitted that amount of compensation awarded by Claims Tribunal in the facts and circumstances of the case is just and proper, which does not call for any interference.

11. I have heard learned counsel for the respective parties and perused the record carefully.

12. So far as first submission made by learned counsel for the appellants/claimants with regard to assessment of income of deceased as Rs.4,700/- per month, learned Claims Tribunal has assessed the income of deceased based on minimum wages

prevailing on the date of accident as appearing in paragraph-19 of impugned award. To appreciate the submission made by learned counsel for the appellants/claimants with regard to income declared by deceased prior to the date of accident vide Ex.P/6 and Ex.P/7, perusal of income tax returns (Ex.P/6 and Ex.P/7) would show that in the said income tax returns, name of Assessee is mentioned as Sabbir Vanak and PAN number is mentioned as “AEVCV1769A”, whereas PAN card of deceased placed on record as Ex.P/8 bears the name of Assesee as 'Sabbir Husain Vanak' and number of PAN card as “AEVPV1769A. Claimants have further placed on record letter of Income Tax Officer, Ward-1(1), Bilaspur dated 10.12.2015 as Ex.P/9. Perusal of contents of letter would show that Income Tax Officer mentioned that return of Sabbir Vanak, Bilaspur for the Assessment Year 2007-08 and 2008-09 is not readily available in the office and requested for a week's time to provide the income tax return of Sabbir Vanak. In the said letter, one Shri Rajesh Kumar Sahasi, Inspector of Income Tax was authorized to appear before Claims Tribunal on 11.12.2015. On 11.12.2015, Rajesh Kumar Sahasi was examined as AW-6. During the course of examination, he stated that he has not brought any record. After examination of Rajesh Kumar Sahasi (AW-6), evidence on behalf of applicants therein was closed. Though Claims Tribunal marked letter dated 10.12.2015 as Ex.P/9, but not considered the same in its entirety. In Section 168 of the M.V. Act and Rule 220 of Chhattisgarh Motor Vehicles Rules, 1994, duty is casted upon Claims Tribunal to conduct proper inquiry. Claims Tribunal, if for any reason, disbelieved the income tax returns to be one of the deceased, then as requested by Income Tax Officer as Ex.P/9, further notice for production of income tax return ought to have been issued.

13. In view of difference of PAN number of deceased and PAN number mentioned in income tax returns (Ex.P/6 and Ex.P/7) on the basis of material available on record, it cannot be concluded that Income tax returns (Ex.P/6 and Ex.P/7) submitted by claimants to be of deceased, unless and until some other evidence verifying the submission of income tax returns of deceased is brought on record from the office of Income Tax, Bilaspur.

14. For the foregoing reasons, submission made by learned counsel for the appellants/claimants that learned Claims Tribunal has erroneously not considered the income of deceased declared vide Ex.P/6 and Ex.P/7, which are of prior to the date of accident, is not sustainable. However, looking to the huge difference of income declared in Ex.P/6 and Ex.P/7, income assessed and further evidence available on record as well as looking to the object of M.V. Act to award just compensation, I find it appropriate to remand back the case to Claims Tribunal only for the assessment of income of deceased on the date of accident after giving an opportunity to the claimants to produce evidence/documents from the office of Income Tax, Bilaspur and thereafter, to recalculate the amount of compensation.

15. In the result, appeal is allowed. Amount of compensation awarded by Claims Tribunal is set aside. The case is remanded back to the First Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh for recalculating the amount of compensation after giving opportunity to the appellants/claimants to prove the income declared by deceased based on the documents available with Income Tax Department as claimed by them. It goes without saying that parties to claim application will be at liberty to lead further evidence and place additional oral and documentary evidence, if any, in support of their claim. Learned Claims Tribunal while recomputing the amount of compensation may consider the rulings 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 award just amount of compensation. Considering date of accident, learned Claims Tribunal is directed to decide the claim application at the earliest, preferably within a period of '5 months' from the date of receipt of copy of order passed by this Court.

16. Original record of Claim Case No.146 of 2010 be sent back forthwith along with copy of this judgment.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh