NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 150 of 2016

1. Smt. Lalita Bai Sahu W/o Late Santu Ram @ Sant Kumar, Aged About 30 Years.
2. Ku. Bhupeshwari D/o Late Santu Ram @ Sant Kumar, Aged About 12 Years.
3. Ku. Jagriti D/o Late Santu Ram @ Sant Kumar, Aged About 10 Year.
4. Ku. Renuka D/o Late Santu Ram @ Sant Kumar, Aged About 5 Years.
5. Ku. Lileshwari D/o Late Santu Ram @ Sant Kumar, Aged About 2 Years.
6. Smt. Bisahin Bai W/o Late Manglu Ram Sahu, Aged About 64 Years.
   Appellant Nos.2 to 5 are minor, through represented by their natural guardian mother appellant No.1. All are R/o Village Joratarai, Tahsil Kurud, District Dhamtari Chhattisgarh.

---- Appellants

Versus

1. Mahesh Kumar Sahu S/o Shri Dwarika Ram Sahu, Aged About 35 Years, R/o Village Maroud, Tahsil Kurud, District Dhamtari Chhattisgarh.
2. Raiyyaa Reddy S/o Chand Raiyyaa Reddy, Aged About 70 Years, R/o Kargil Chowk Kurud, Tahsil Kurud, District Dhamtari Chhattisgarh.
3. Branch Manager, National Insurance Company Limited, G.E. Road, Mobin Mahal Raipur, Tahsil and District Raipur Chhattisgarh.

--- Non-applicant Nos.1 to 3/Respondents

For Appellants	:	Mr. Puskar Sinha, Advocate with Shri Santosh Das, Advocate.
For Respondent Nos.1 and 2	:	None.
For Respondent No.3	:	Mr. R.N. Pusty, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

24/09/2021

1. Claimants-appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by learned Chief Motor Accident Claims Tribunal, Dhamtari, District -Dhamtari, (CG) (for short 'Tribunal') vide award dated 01.07.2015 in Claim Case No.141/2014, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.4,48,000/- in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 11.06.14 Santu Ram (deceased) was standing near FCI godown, situated at village Bhatagaon. At that time, truck bearing registration No.CG/04/G/6750, (for short

'offending vehicle') was reversed rashly and negligently by Non-applicant No.1 and dashed Santu Ram. In the said accident, he suffered grievous injuries over his person. He was taken to Christian Hospital, Dhamtari where he took treatment as in-patient for about one week. Thereafter, he was referred to Mekahara Hospital, Raipur where he took treatment for about one week but looking to his condition, doctor advised his family members to take him back to home. He succumbed to the injuries on 19.07.2014.

3. Appellants/claimants, who are widow, children and widow mother of deceased, filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.18,24,000/- mentioning therein that on the date of accident, deceased was an able bodied person, he was working as 'Loader' in FCI Godown and thereby earning Rs.300/- per day. Claimants were dependent upon income of deceased.

4. Non-applicant Nos.1 & 2/driver and owner of offending vehicle, submitted reply to claim application and denied the facts pleaded therein. It was further pleaded that offending vehicle was falsely implicated in accident. Deceased died due to injuries suffered by him on account of fall of paddy bags stack on him from the top of offending vehicle. On the date of accident, non-applicant No.1 was possessed with valid and effective driving license and offending vehicle was insured with non-applicant No.3, hence liability, if any, to pay amount of compensation would be of non-applicant No.3.

5. Non-applicant No.3/Insurance Company also submitted its reply to claim application and resisted the claim. It was pleaded that on the date of accident non-applicant No.1 was not possessing valid and effective driving license, there was no fitness certificate with offending vehicle, hence,

there was breach of policy condition, therefore, Insurance company is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Santu Ram died on account of motor-accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1. Breach of Policy condition was not found to be proved. Tribunal upon assessing income of deceased as Rs.3,000/- per month, awarded total compensation of Rs.4,48,000/- alongwith interest @ 6% per annum, fastened liability upon non-applicant No.3-Insurance Company to pay the amount of compensation.

7. Learned counsel for appellants/claimants submits that Tribunal erred in awarding meager amount of compensation. Tribunal assessed income of deceased at Rs.3,000/- per month, overlooking the date of accident, nature of occupation of deceased as ‘loader’. Tribunal ought to have determined income of deceased as Rs.6,000/- per month. Tribunal erred in deducting 1/3rd towards personal and living expenses overlooking number of claimants/dependents upon deceased on the date of accident. Tribunal has not awarded any compensation towards future prospects, as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[1], and amount awarded under other conventional heads is also on lower side which needs to be enhanced suitably in light of decision of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors**[2].

8. Learned counsel for respondent No.3-Insurance Company submits that except pleadings and oral evidence claimants have not brought on record

1 (2017) 16 SCC 680
2 (2018) 18 SCC 130.

any admissible piece of evidence establishing income of deceased. In such situation, Tribunal justified in assessing income of deceased on notional basis. Amount of compensation awarded to claimant in the facts and circumstances of the case is just and proper and does not call for any interference.

9. Heard learned counsel for the parties and perused record of claim case.

10. So far as submission of learned counsel for appellants with respect to assessment of income of deceased is concerned, perusal of record would show that in claim application claimants have pleaded occupation of deceased as 'loader'. Except pleading with regard to income of deceased as Rs.3,00/- per day and oral statement, no other admissible evidence is available on record to prove income of deceased. In such a situation, income of deceased is to be assessed on notional basis considering the factors like age of deceased, nature of occupation, wage structure and cost of living on the date of accident ie on 11.06.14. In the year 2014 an ordinary manual labourer could have earned more than what is assessed by Tribunal. Taking into consideration the aforementioned factors, I find it appropriate to assess income of deceased as Rs.5,000/- per month. It is ordered accordingly.

11. Coming to next argument advanced by learned counsel for appellant that Tribunal erred in not awarding any amount towards future prospects. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that in case deceased, victim of motor accident, was not in permanent employment and below the age of 40 years, an addition of 40% of establish income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

12. Indisputably, in case at hand, on the date of accident, deceased was aged about 30 years and not in permanent employment, therefore, there shall be an addition of 40% of established income towards future prospects to income of deceased for assessing total income for the purpose of calculating compensation.

13. In case of **Pranay Sethi** (supra) Hon'ble Supreme Court has specified the heads for awarding compensation on other conventional heads and also quantified the amount for those heads. The heads on which compensation is to be awarded are loss of consortium, loss of estate and loss of funeral expenses. In case of **Nanu Ram** (supra), Hon'ble Supreme Court explained the types of consortium and held that there are three types of consortium ie loss of spousal consortium to wife or husband, loss of parental consortium to children and loss of filial consortium to parents of deceased.

14. For the foregoing reasons, I propose to recompute amount of compensation to be awarded to claimants.

15. Income of deceased is taken as Rs.5,000/- per month. By adding 40% of established income towards future prospects, total monthly income of deceased comes to Rs.7,000/- (Rs.4,000 + 40% of 4,000) and annual income as Rs.84,000/- (12 X 7000). Number of dependents on the date of accident were '6', therefore, there will be deduction of 1/4th of the income towards personal and living expenses as per decision of Hon'ble Supreme

Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**[3]. After deducting 1/4th towards personal & living expenses, yearly loss of dependency will come to Rs.63,000/- (Rs.84,000/ – ¼ of Rs.84,000/-). By applying multiplier of 17 to annual loss of dependency, total loss of dependency will come to Rs.10,71,000/- (Rs.63,000 X 17). Apart from this, appellants are also entitle for a sum of Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of filial consortium, Rs.40,000/- towards loss of parental consortium, Rs. 15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate.

16. Now, appellants/claimants shall be entitled for a total compensation of Rs.12,21,000/- (Rs.10,71,000/- + Rs.40,000/- + Rs.40,000/- + Rs.40,000/- + Rs. 15,000/- + Rs.15,000/-) instead **of Rs.4,48,000/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

17. Amount of compensation already paid by respondent No.3/insurance Company shall be adjusted from amount of compensation calculated by this Court.

18. In result appeal is allowed in part and impugned award stands modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-

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3 (2009) 6 SCC 121