NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 401 of 2015

1. Kalyani Sarkar, Wd/o Late Ganesh Chandra Sarkar Aged About 45 Years
2. Kamlinee Sarkar D/o Late Ganesh Chandra Sarkar Aged About 10 Years Minor Through The Natural Guardian Mother Appellant No. 1, Kalyani Sarkar

   Both R/o Rajkishore Nagar, P.S. Sarkanda, Tahsil And Distt.- Bilaspur, Chhattisgarh

---- Appellants

Versus

1. Umesh Kumar Singh, S/o Shri Roshan Ram Aged About 45 Years R/o Village And Post Tapkara, Tahsil Kunkuri, Distt.- Jashpur, Chhattisgarh (Owner and Driver Bolero No.CG 15B-5099)
2. The Oriental Insurance Co. Limited Through The Divisional Manager, Near Bus Stand, Bilaspur, Distt. Bilaspur, Chhattisgarh (Insurer Bolero No.CG 15 B- 5099)

----Respondents

For Appellants	:	Shri Pushkar Sinha, Advocate
For Respondent- 1	:	None appears
For Respondent- 2	:	Shri Ratan Pusty, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
05.02.2021

1. Appellants/claimants have preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 10.02.2015 passed by the 6th Additional Motor Accident Claims Tribunal, Bilaspur (for short, 'Claims Tribunal') in Claim Case-13 of 2013, whereby learned Tribunal allowed the application filed under Section 166 of the Act of 1988 in part and awarded Rs.56,70,200/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 18.06.2012, Ganesh Chandra Sarkar was travelling on his Indica Car driven by its driver along with

appellants and returning back to Manindragarh from West Bengal, via Jashpur. When they reached near village Kunkuri Mahua Toli, one Bolero Jeep bearing No.CG 15B-5099 (for short, 'offending vehicle') driven by NA1 rashly and negligently, dashed Indica Car by coming on wrong side. In the said accident, Ganesh Chandra Sarkar suffered grievous injuries and died.

3. Appellants/claimants, who are wife and child of deceased Ganesh Chandra Sarkar filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.1,64,25224/- pleading therein that on the date of accident, deceased was working as Doctor with SECL (South East Coal Fields Limited), posted at Central Hospital, SECL Amakhorva, Manindragarh and earning Rs.1,43,931/- per month as salary.

4. NA1, driver and owner of offending vehicle. did not appear before the Claims Tribunal and he was proceeded *ex parte*.

5. NA2, Insurer of offending vehicle submitted reply to claim application while denying the pleadings made therein, further pleaded that NA1 was driving offending vehicle without there being any valid and effective driving license and proper requisite documents of offending vehicle, as such, there was breach of policy conditions. It was also pleaded that driver of Indica Car was also not having valid and effective driving license.

6. Learned Tribunal on appreciation of pleadings and evidence brought on record by respective parties held that Ganesh Chandra died on account of motor accidental injuries due to rash and negligent driving of offending vehicle

(Bolero) by NA1. Contributory negligence and breach of policy conditions were not found to be proved and awarded Rs.56,70,200/- as total compensation.

7. Shri Pushkar Sinha, learned counsel for the appellants submits that learned Claims Tribunal erred in awarding meagre amount of compensation by assessing income of the deceased on lower side, over looking documents placed on record ie salary slip and Form-16 prepared by the employer/SECL wherein income of deceased has been shown to be Rs.24,46,059/- per annum. He further submits that Tribunal also erred in not awarding any amount towards future prospects, and awarded compensation of Rs.20,000/- only on other conventional heads, which is on lower side.

8. In support of his contentions, learned counsel for appellants placed reliance on judgement passed by Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others** reported in **(2018) 18 SCC 130** and submitted that amount of compensation be suitably enhanced.

9. Shri Ratan Pusty, learned counsel for Insurance Company while denying the submissions of learned counsel for the appellants, submits that Tribunal taking into consideration overall facts and circumstances of the case, has awarded just amount of compensation, which does not call for any interference. He further submits that appellants are not entitled for any amount of compensation towards future prospects as they are getting family pension from the employer /department, besides the amount of compensation awarded by the Claims Tribunal. He in support of his contention, places reliance upon the

judgement of Hon'ble Supreme Court in case of **Sebastiani Lakra and othrs Vs National Insurance Company Limited and another** reported in **(2019) 17 SCC 465** and **Shyamwati Sharma and others Vs Karam Singh and others** reported in **(2010) 12 SCC 378**.

10. We have heard learned counsel for the respective parties.

11. This appeal is only for the enhancement of amount of compensation awarded by the Tribunal.

12. 1st Ground raised by learned counsel for the appellants is with regard to assessment of income by the Tribunal to be erroneous.

13. To appreciate the submissions made by learned counsel for the appellants, we have perused record of claim case. Claimants in support of their pleadings with regard to income of the deceased, have placed on record Ex.P8 and Ex.P9(c) Salary slips, Ex.P10(c) Form-16 of Assessment year 2011-12, Ex.P11(c) Form 16 for Assessment year 2013-14, Ex.P12 Saving particulars statement for the year 2011-12, Ex.P 13(c) Form-16 of Assessment year 2012-13.

14. Perusal of aforementioned documents would show Gross income of deceased as Rs.2,79,198/- and Net pay as Rs.91,723/-. Learned Claims Tribunal in para-19 of impugned award has taken income of deceased as Rs.91,723/- and calculated amount of compensation. For calculating amount of compensation, total Gross salary is to be taken into consideration, minus Income Tax. In Ex.P13(c), which is Form 16, total taxable income is mentioned as Rs.23,11,020/-.

15. To prove the income of deceased, apart from evidence of appellant-1, appellants have examined AW2 Sanjay, who was working at Central Hospital Manindragarh. In his evidence, he stated that in the year 2011, Gross Income of deceased was Rs.18,79,959/- per annum and Income Tax of Rs.3,90,358/- was deposited for assessment year 2013-14. He also stated that as per Ex.P13(c), Total Income of deceased has been shown to be Rs.24,46,039/- and Rs.5,61,665/- was deducted towards income tax.

16. In view of above documentary and oral evidence available on record, learned Claims Tribunal erred in not considering the documents which are official documents and has taken into consideration only net pay of deceased for calculating compensation. Income of employee means basic pay and other such perks which are being given to the employee like DA, HRA etc. Looking to document Ex.P13(c) available on record which is Form-16, it will be appropriate to assess income of the deceased on the basis of income shown therein. Gross salary has been shown to be Rs.23,22,872/- per annum, from which income tax is to be deducted as per income tax slab prevailing for Assessment year 2012-13.

17. 2nd Submission of learned counsel for the appellants is that Tribunal has not awarded any amount towards future prospects.

18. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has dealt with the issue of awarding compensation towards future prospects and held as under :

> "59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to

50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

19. In the aforementioned judgement of Hon'ble Supreme Court, it is held that there will be addition of 15% for the victim in the age group of 50-60 years. The Ruling of **Sebastiani Lakra** (supra) relied upon by Shri Ratan Pusty of not awarding any amount towards future prospects was on different facts. In that case, Hon'ble Supreme Court has considered that after death of employee, family was being paid additional amount of Rs.50,082/- per month under Employees Family Benefit Scheme. In the case at hand, no such benefit is extended to the appellants herein.

20. For the foregoing reasons, we are of the view that claimants are further entitle for addition of 15% of amount towards future prospects.

21. The award of amount of compensation on other conventional heads is also well settled by Hon'ble Supreme Court in cases of **Pranay Sethi and Nanu Ram** (supra). Award under other conventional heads is on the head of loss of consortium, loss of estate and funeral expenses. Amount of compensation is also quantified.

22. For the foregoing discussion, the amount of compensation is required to be recalculated/recomputed is as under;

a) Income of deceased assessed as Rs.2,32,872/- as shown in Ex.P13(C).

b) There will be addition of 15% of the established income towards future prospects for ascertaining total income of the deceased for the purpose of calculating amount of compensation. [348430.80 (2322872x15/100), rounded off to Rs.348431/-]

c) By adding 15% to established income of deceased, his total yearly income comes to Rs.26,71,303/- [2322872 + 348431]

d) Income Tax to be deducted from gross salary is as under:

Income (Rs)	Slab (Rs) (2012-13)	%	Tax (Rs)
1,80,000.00	0-180000	0	0
3,20,000.00	180001-500000	10	32,000.00
3,00,000.00	500001-800000	20	60,000.00
18,71,303.00	Exceeds 800000 (1986262 - 800000)	30	5,61,390.90
19,86,262.00			6,53,390.90
Add: 3% Education Cess of Rs.6,53,390.90			19,601-72
Total Tax			6,72,992-62

e) Net income of the deceased after deducting Income Tax is **Rs.1998310**/- (2671303 – 672992.627)

f) There will be deduction of 1/3rd of net income towards personal and living expenses of the deceased. Now, appellants' yearly dependency comes to Rs.13,32,206.66 {1998310 — (1998310 x 1/3)}, which is rounded off to Rs.13,32,207/-

g) On the date of accident, deceased has been shown to be within the age group of 51-55 years. Hence, appropriate multiplier would be 11. Upon applying multiplier of 11 to the yearly dependency of the claimants, total loss of dependency comes to Rs.1,46,54,227/- (1322207 x 11)

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

23. Now, appellants/claimants shall be entitled for total compensation of Rs.1,46,65,277/- (14654277 + 40000 + 40000 + 15000 + 15000) instead of Rs.56,70,200/- as awarded by the Claims Tribunal.

24. Aforementioned total amount of compensation shall carry interest @ 7.5% per annum from the date of filing of claim application till its realisation. Fifty percent (50%) of the enhanced amount of compensation shall be kept in a fixed deposit scheme of any nationalized bank for a period of three years.

25. Other conditions imposed by the Tribunal shall remain intact.

26. The appeal is allowed in part and impugned award is modified to the extent as indicated above.

(PR Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

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