

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 400 of 2015**

1. Mus. Leelawati Kurre, Wd/o Late Santosh Kurre, Aged About 25 Years
2. Ku. Swati Kurre, D/o Late Santosh Kurre, Aged About 4 Years
3. Ayeera Kurre, D/o Late Santosh Kurre, Aged About 1 Year
4. Mohar Maniya, W/o Shri Prem Sukh Kurre, Aged About 45 Years

Appellants No.2 and 3 are minors through their natural guardian i.e. the appellant No. 1 (Mus. Leelawati Kurre)

All are resident of Village Kota, Tahsil Kota, District Bilaspur, Chhattisgarh

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1. Ashutosh Dubey, S/o Shri Umendranath Dube, Aged About 28 Years, resident of Shivpur, Tah. Surajpur, District Surguja, Chhattisgarh (*Driver of Motorcycle TVS Star City No.CG 15 CA 0902*)
2. Upendranath Dubey, aged and son of not known, resident of Village Shivpur, Bhjuneshwarpur, Tah. Surajpur Distt.- Surguja, Chhattisgarh (*Owner of Motorcycle TVS Star City No.CG 15 CA 0902*)
3. United India Insurance Company Limited, through the Divisional Manager, Rajendra Nagar Chauk, Bilaspur, Chhattisgarh (*Insurer of Motorcycle TVS Star City No.CG 15 CA 0902*)

---- Respondents

For Appellants	: Shri Samir Singh, Advocate on behalf of Shri N.P. Chandravanshi, Advocate
For Respondents No.1 & 2	: None
For Respondent No.3	: Shri Dashrath Gupta, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

25.01.2021

1. Appellants/claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 03.02.2015 passed by the 2nd Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.862 of 2014 whereby learned Claims Tribunal allowed an application filed under Section 166 of the M.V. Act in part and awarded Rs.13,29,381/- as total compensation in a fatal accident case.
2. Brief facts relevant for disposal of this appeal, are that, on 12.02.2011, Santosh Kurre was returning to his house at village Kaushalpur on motorcycle, while so, when he crossed village Shivpuri, non-applicant No.1 while driving his motorcycle bearing No.CG-15/CA/0902 (hereinafter referred to as 'offending vehicle') rashly and negligently came on wrong side and dashed the motorcycle of Santosh Kurre. In the said accident, Santosh Kurre suffered grievous injuries over his person, he was taken to Hospital at Raipur, but looking to seriousness of injuries, he was referred to Ramkrishna Care Hospital, Raipur where during the course of treatment, he died.

Accident was reported to concerned Police Station, based on which, crime was registered against non-applicant No.1.

3. Appellants/claimants, who are widow, children and mother of deceased Santosh Kurre filed an application under Section 166 of the M.V. Act seeking compensation of Rs.24,27,199/- pleading therein that on the date of accident, deceased was aged about 28 years, working as Shiksha Karmi Grade-III and earning Rs.7,293/- per month as salary. The claimants were dependent upon the income of deceased for their livelihood.
4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle did not appear before learned Claims Tribunal and were proceeded *ex parte*.
5. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying pleadings therein, pleaded that claimant No.1 has been given benefit of compassionate appointment; deceased himself was negligent in the accident, owner and insurer of motorcycle driven by the deceased were not arrayed as party non-applicants, hence there was non-joinder of necessary party. It was further pleaded that death of Santosh Kurre was on account of medical negligence, employment of deceased as Shiksha Karmi Grade-III was denied. Non-applicant No.1 was not possessed with valid and effective driving licence.
6. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties arrived at a finding that Santosh Kurre died on account of motor accidental

injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1; breach of policy conditions was not found to be proved, awarded Rs.13,29,381/- as total compensation and fastened liability upon non-applicant No.3/Insurance Company to satisfy the amount of compensation.

7. Shri Samir Singh, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in assessing income of deceased as Rs.6,907/- per month only overlooking pay-bill (Ex.P/13) wherein income/salary of deceased has been shown as Rs.7,293/-. He further submits that learned Claims Tribunal has not awarded any amount towards future prospects as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** and further reliance is placed on the ruling of Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**. It is contended that learned Claims Tribunal has awarded meagre amount of compensation towards other conventional heads and submits that amount of compensation awarded by learned Claims Tribunal be suitably enhanced. It is further contended that learned Claims Tribunal erred in not awarding the interest from the date of accident till its realization, but has awarded default interest at the rate of 6% per annum.

8. No one appeared on behalf of respondents No.1 and 2 even after service of notice.
9. Per contra, Shri Dashrath Gupta, learned counsel for respondent No.3/Insurance Company supported the award impugned and submits that on appreciation of evidence and material brought on record, learned Claims Tribunal awarded just amount of compensation, which does not call for any interference.
10. We have heard learned counsel for the respective parties and perused the record carefully.
11. So far as the submission made by learned counsel for the appellants/claimants with regard to assessment of income of deceased as Rs.6,907/- per month, perusal of record would show that claimants have placed on record the certificate issued by Headmaster (Ex.P/12), wherein salary of deceased has been mentioned as Rs.7,293/-. Claimants have also placed on record pay-bill of Shiksha Karmi Grade-III, Janpad Shiksha Kendra, R.G.S.M. [SSA], Ramanujnagar for the month of January-2011 issued by the Chief Executive Officer, Janpad Panchayat, Ramanujnagar (Ex.P/13), wherein name of deceased Santosh Kurre is shown at Sl.No.49 and total salary as Rs.7,293/-. Claimants have examined one Sachhidanand Dubey (AW-4), Assistant Teacher, Panchayat Grade-III, working as In-charge Headmaster since 01.08.1998. He in his evidence-in-chief stated that on the date of accident, deceased was paid Rs.7,293/- per month as salary. In cross-examination,

he admitted that as per record of the month of February-2011, Santosh Kurre received salary of Rs.6,907/-. Learned Claims Tribunal has not considered the documentary evidence which is available on record issued by the Chief Executive Officer, Ramanujnagar (Ex.P/13) and certificate (Ex.P/12) issued by the Headmaster (AW-4) on 28.06.2011 wherein both the documents, salary of deceased has been shown as Rs.7,293/-. There may be some other reason for getting less salary in the month of February-2011 as stated by Sachhidanand Dubey (AW-4) in his cross-examination. Learned Claims Tribunal has not taken into consideration the document (Ex.P/13), which is issued under the signature of Chief Executive Officer, Janpad Panchayat, Ramanujnagar of the Shiksha Karmi Grade-III working under Janpad Shiksha Kendra, R.G.S.M. [SSA], Ramanujnagar showing salary of deceased as Rs.7,293/- per month.

12. In view of above, we are of the considered view that learned Claims Tribunal erred in not considering the documents available on record i.e. Ex.P/12 and Ex.P/13, but considered the evidence of Sachhidanand Dubey (AW-4), only to assess the income. We hereby set aside the finding recorded by learned Claims Tribunal with regard to assessment of income of deceased as Rs.6,907/- and hold the income of deceased as Rs.7,293/- per month.
13. So far as the next submission made by learned counsel for the appellants/claimants that learned Claims Tribunal has not

awarded any amount towards future prospects, learned Claims Tribunal for non-grant of future prospects has held that no document is placed on record to show whether employment of deceased as Shiksha Karmi Grade-III was a permanent employment or a temporary employment. Learned Claims Tribunal erred in not considering the evidence of Sachhidanand Dubey (AW-4) wherein he has stated that on the date of accident, deceased was posted as Shiksha Karmi Grade-III. There was no evidence brought on record by the non-applicants to show that deceased was not in a permanent employment more so when deceased was getting a monthly salary from the competent authority as per pay-bill (Ex.P/13).

14. In view of aforementioned facts and circumstances of the case, we find it appropriate to award 50% of the established income towards future prospects as age of the deceased on the date of accident was less than 40 years. Apart from above, claimants will further be entitled for the amount of compensation on the head of loss of consortium, loss of estate and funeral expenses as per ruling of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130** as well as medical expenditure incurred by the claimants in treatment of deceased.
15. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the

claimants requires re-consideration and re-computation, which is as under :

The income of deceased is taken as Rs.7,293/- per month and Rs.87,516/- per annum, there shall be an addition of 50% of established income towards future prospects, which makes the total annual income of deceased as Rs.1,31,274/- ($87,516 \times 50\% = 43,758$ and $87,516 + 43,758$). Deceased was survived by widow, two children and mother, hence, there shall be deduction of $1/4^{\text{th}}$ towards personal and living expenses. After deducting $1/4^{\text{th}}$ towards personal and living expenses of the deceased, yearly loss of dependency of claimants will come to Rs.98,455/- ($1,31,274 / 4 = 32,818.5$ rounded off to 32,819 and $1,31,274 - 32,819$). There shall be application of multiplier of 16 as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra) as the deceased was in the age group of 31-35 years, which makes the total loss of dependency as Rs.15,75,280/- ($98,455 \times 16$).

Apart from above amount of compensation towards loss of dependency, claimants will be further entitled to Rs.40,000/- towards spousal consortium to widow, Rs.40,000/- towards parental consortium to children, Rs.40,000/- filial consortium to mother, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.2,42,610/- towards medical expenditure incurred by the claimants in the treatment of deceased as awarded by learned Claims Tribunal.

16. Now, appellants/claimants are entitled for total compensation of Rs.19,67,890/- (15,75,280 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000 + 2,42,610) instead of Rs.13,29,381/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of accident till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.
17. In the result, appeal filed by the appellants/claimants is allowed in part. Impugned award is modified to the extent as indicated herein-above.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh