NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 812 of 2013

1. Smt. Vimla Devi aged about 47 years, W/o Lt. Komalchand Soni **[Deleted]**
2. Hemant Kumar Soni, aged about 26 years, s/o Lt. Komalchand Soni

   Both are R/o Kamthi Line, Near State Bank Rajnandgaon, P.S. City Kotwali, Tah. Rajnandgaon, Civil and Revenue District-Rajnandgaon, C.G.

------Appellant

VERSUS

1. Harkesh Kumar S/o Prahlad Kushwaha, R/o Javhir Narendra, P.S. Tariya Sujan, Civil and Revenue District Kushinagar, U.P.

2. Harishanker, S/o Ratansingh Verma, R/o HIG-13, Phase- 1 C Krishnapuram, P.S. Not mentioned in impugned order, Hoshangabad Road, Bhopal, Civil and Revenue District Bhopal, M.P.

3. Oriental Insurance Co. Ltd. through Branch Manager, Branch Office-Station Road, Near L.I.C. Office, Rajnandgaon, P.S. City Kotwali Rajnandgaon, Civil and Revenue District-Rajnandgaon, C.G.

-------**Respondents**

For Appellant	:	Mr. Rakesh Thakur, Advocate.
For Respondent 1&2	:	None.
For Respondent No. 3	:	Mr. Pankaj Agrawal, Advocate

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

Per Parth Prateem Sahu, J.

13/04/2021

1. Appellant-claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 23-01-2013 passed by First Additional Motor Accident Claims Tribunal, Rajnandgaon in claim case 102/2012, wherein the learned Claims Tribunal allowed the claim application in part and awarded total sum of Rs. 1,92,000/- as compensation in a death case.

2. Initially the appeal was filed by both the claimants. During the pendency of this appeal, appellant 1 (mother of deceased) died and her name was deleted.

3. Facts relevant for disposal of this appeal are that on 18-11-2010 at about 10:30 p.m., Ganesh Ram Soni was returning to his house at Kamthi Line, Rajnandgaon from Madimata Temple on his scooter, when he reached near PTS, Rajnandgaon, one truck trailer bearing registration no. PB 23F 6677 (hereinafter referred to as "offending vehicle") coming from opposite direction dashed the scooter of Ganesh Ram Soni and caused accident. In the said accident, he suffered grievous injuries over his person and succumbed to those injuries on spot. Accident was reported to concerned police station based on which crime was registered against Respondent 1/ Non-applicant 1-driver of the offending vehicle. Claimant who is younger brother of the deceased filed an application under Section 166 of the Motor Vehicles Act, seeking compensation of Rs. 66,17,000/- mentioning therein that on the date of accident, deceased was working with Reliance Life Insurance company and was earning Rs. 15,000/- per month, claimant was dependent upon him but on account of untimely motor accidental death of late Ganesh Ram Soni, he is deprived of the income of the deceased.

4. Respondent 1 and 2/ Non-applicant 1 and 2 did not appear before the learned Claims Tribunals even after service of notice and they were proceeded *ex parte*.

5. Respondent 3/ Non-applicant 3 submitted reply to the claim application and denied the fact of accident. It was further pleaded that, it was the deceased himself who was driving his scooter rashly and negligently and met with accident; income of Rs. 1,80,000/- per annum of the deceased was denied and further pleaded that the driver of the offending vehicle was not possessing valid and effective driving licence, there was breach of conditions of insurance policy and hence the Insurance Company is not liable for payment of any amount of compensation.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties held that motor accidental death of late Ganesh Ram Soni was on account of rash and negligent driving of the offending

vehicle by Respondent 1/ Non-applicant 1, breach of conditions of insurance policy was not found to be proved and awarded sum of Rs. 1,92,000/- as compensation fastening liability upon the Non-applicants jointly and severally to satisfy the amount of compensation.

7. Learned counsel for the appellant submits that the learned Claims Tribunal erred in awarding meagre amount of compensation. He submits that the Claims Tribunal has assessed the income of the deceased only as Rs. 3,000/- per month contrary to the documentary evidence placed on record by the claimant to show the income of the deceased as Rs. 15,000/- per month. He further contended that the Claims Tribunal also erred in applying the multiplier of 10 overlooking the judgment passed by the Hon'ble Supreme Court in the case of ***Sarla Verma & others v. Delhi Transport Corp. & anr*** reported in **(2009) 6 SCC 121** wherein the deceased falling within the age group of 26-30 years, multiplier of 17 is prescribed. It is also contended that the Claims Tribunal has not awarded any amount towards loss of future prospects as held by Hon'ble Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680** and further awarded meagre amount on other conventional heads. In view of the above submission, he submits that the impugned award may be suitably enhanced.

8. Per contra, Mr. Pankaj Agrawal, learned counsel appearing for Respondent 3/ Insurance Company submits that the Claims Tribunal assessed the income of the deceased on notional basis as the claimant failed to prove the income by placing cogent and reliable piece of evidence. He submits that as on the date of accident, deceased was unmarried and therefore, the Claims Tribunal taking into consideration the age of his mother applied the correct multiplier and awarded just and proper compensation in the facts and circumstances of the case which does not call for any interference.

9. We have heard learned counsel for the respective parties and also perused the record of the case.

10. Sofar as, the first ground raised by learned counsel for the appellant with regard to income of the deceased; claimant in his claim application has pleaded that prior to the date of accident, deceased was employed with Reliance Life Insurance company and earning Rs. 15,000/- per month. In support of his pleadings, claimant has placed on record copies of the mark-sheet of 8th class and mark-sheet of B.Com (III) graduation showing him to be passed in 2nd Division as Ext. P-9 and P-10, offer of appointment of Reliance Life Insurance company is placed on record as Ext. P-11 wherein it is mentioned that deceased was appointed as Associate Sales Manager-Agency in Grade E-1. In the offer of appointment, it is mentioned the salary and allowances of deceased employee as Rs. 1,80,000/- per annum, this appointment offer is of the date of 23-12-2009 and date of joining has been shown as 06-03-2010. This offer of appointment further shows that it is target based engagement of the deceased with Reliance Life Insurance company. Claimant in support of income pleaded in the claim application has examined Hemant Kumar Soni, as AW-1, who is applicant No. 2. In cross examination, this witness has admitted that he has not placed on record any document with regard to salary received by the deceased from his employer, no document is placed on record of submission of income tax return. Looking to the evidence placed on record by the claimant and the document Ext. P-11 only shows the offer of appointment of the deceased with Reliance Life Insurance, though the deceased had accepted the appointment and was working with the Company and drawing salary could not be proved. In view of the above material and evidence available on record, income of the deceased as pleaded and mentioned in the offer of appointment letter could not be accepted as it is. But looking to the qualification and also issuance of offer of appointment on the post of Associate Sales Manager, Grade E-1 issued by Reliance Life Insurance company, we find it appropriate to assess the income of the deceased on notional basis as Rs. 7,000/- per month i.e. Rs. 84,000/-. In the income assessed by this Court, there will be an addition of 40% of the established income for calculating the total income of the deceased as held

by the Hon'ble Supreme Court in the matter of **Pranay Sethi (supra)**.

11. Sofar as, the application of multiplier is concerned, in cases of death of bachelor person in motor accidents, the law in this regard is now well settled by the Supreme Court and recently in case of ***Sube Singh v. Shyam Singh*** reported in **(2018) 3 SCC 18**, the Hon'ble Supreme Court has held that the multiplier to be applied in fatal accident cases, considering the age of the deceased and not the age of parents of the deceased. In view of the above, in the case at hand, on the date of accident age of the deceased was 28 years 1 month and 26 days, as per the date of birth mentioned in Ext. P-9, mark-sheet of 8^{th} class (as 22-09-1982). In view of the above, the appropriate multiplier would be 17 for age group in between 26-30 years. Learned Claims Tribunal awarded only Rs. 10,000/- towards love and affection and Rs. 2,000/- towards future expenses which is on lower side in view of the law laid down by the Hon'ble Supreme Court in **Pranay Sethi (supra)** and in ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in **(2018) 18 SCC 130**.

12. For the foregoing reasons, the award passed by the Claims Tribunal requires re-computation which is worked out as under.

13. Income of the deceased as already been assessed as Rs. 7,000/- per month i.e. Rs. 84,000/- per annum, by adding 40% of the assessed income, total income of the deceased will come to Rs. 1,17,600/- [Rs.84,000+40% of Rs.84,000]. Deceased, on the date of accident was a bachelor, therefore, there will be deduction of 50% of the amount towards personal and living expenses. After deducting 50%, yearly loss of dependency will come to Rs. 58,800/-. After applying the multiplier of 17, to yearly dependency, total loss of dependency will come to Rs. 9,99,600/- [Rs.58,800x17]. Apart from the aforementioned loss of dependency, claimant will further be entitled for Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.

14. Now the appellant-claimant shall be entitled for a total sum of **Rs.10,29,600/- (in words: Rupees Ten Lac Twenty-Nine Thousand and Six Hundred Only)** [Rs.9,99,600+Rs.15,000+Rs.15,000] instead of Rs. 1,92,000/-. The amount of compensation shall carry interest @ 6% from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

15. Consequently, the appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

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