NAFR

HIGH COURT OF CHHATTISGARH BILASPUR
M. A. (C) No. 89 of 2015

1. Jagdish Bansod, son of Maroti Bansod, aged about 50 years,
2. Smt. Prabha Bansod, wife of Jagdish Bansod, aged about 46 years,
3. Roshan Bansod, son of Jagdish Bansod, aged about 21 years,
4. Ku. Sangeeta Bansod, D/o Jagdish Bansod, aged about 21 years,

All R/o Khursipar, Bhilai, District Durg (C.G.). (Claimants)

---- Appellants

Versus

1. Amresh Singh, son of Ravindar Singh, R/o B.B.C. Colony, Dr. Rajendra Prasad Nagar, Khursipar, Bhilai, District Durg (C.G.) (Driver),
2. Pawan Kumar Pandey, son of Ramdhani Pandey, R/o near Balaji Nagar, Zone-2, Khursipr, Bhilai, District Durg (C.G.) (Owner),
3. Ifco Tokiyo General Insurance Company Limited Indore, Through : Ifco Tokiyo General Insurance Company Limited Branch Office, Dakshin Gangotri, Supela, Bhilai, District Durg (C.G.) (Insurer).

---- Respondents

For Appellants	: Shri Ishwar Jaiswal, Advocate
For Respondents No.1 & 2	: None
For Respondent No.3	: Shri Tessy Abraham, Advocate on behalf of Shri Amrito Das, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

12/01/2021

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 impugned award dated 15/09/2014 passed by the 6th Additional Motor Accident Claims Tribunal,

District Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.37 of 2013 whereby learned Claims Tribunal allowed the application for grant of compensation in part and awarded Rs.9,19,000/- as total compensation in a fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 27/02/2011 Rahul Bansod was standing on left side of G.E. Road along with his friend, while so, one motorcycle bearing No.CG-07/LJ/0356 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1, dashed Rahul Bansod and his friend and caused accident. In the said accident, Rahul Bansod suffered grievous injuries over his person started bleeding, he was immediately taken to Chandulal Chandrakar Memorial Hospital, Bhilai where he succumbed to the injuries during the course of treatment on 06/03/2011.

3. Appellants/claimants, who are parents and siblings of the deceased Rahul Bansod filed an application under Sections 166 and 140 of the M.V. Act seeking compensation of Rs.30,50,000/- pleading therein that on the date of accident, deceased was aged about 27 years, working as Supervisor with Sai Transport, Bhilai and earning Rs.7,000/- per month i.e. Rs.84,000/- per annum.

4. Non-applicants No.1 and 2 submitted reply to claim application, denied the facts pleaded therein. They have taken a plea of false implication and false registration of crime against non-applicant No.1. The accident was a result of negligence on the

part of deceased. On the date of accident, offending vehicle was insured with non-applicant No.3, as such, liability to pay the amount of compensation would be upon non-applicant No.3.

5. Non-applicant No.3/Insurance Company submitted reply to claim application and denied the facts pleaded therein. It was pleaded that amount of compensation claimed is highly exaggerated. Non-applicant No.1 was not possessed with valid and effective driving licence and thereby there was breach of policy conditions.

6. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties held that non-applicant No.1 while driving offending vehicle, owned by non-applicant No.2, rashly and negligently, dashed Rahul Bansod, on account of which, he succumbed to motor accidental injuries, contributory negligence was not found to be proved, further held that there was breach of policy conditions, awarded Rs.9,19,000/- as total compensation. While exonerating the Insurance Company from its liability, fastened liability upon non-applicants No.1 and 2 to satisfy the amount of compensation.

7. Shri Ishwar Jaiswal, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in awarding meagre amount of compensation while calculating the income of deceased as Rs.7,000/- per month and Rs.84,000/- per annum. He further submits that on the

date of accident, deceased was only 27 years of age, but learned Claims Tribunal erred in not awarding any amount towards future prospects. It is contended that learned Claims Tribunal further erred in not awarding any amount towards medical expenses overlooking the medical bills placed on record and further awarded only Rs.25,000/- towards other conventional heads. In support of his contention, he placed reliance on the ruling rendered by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** 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**. It is further contended that learned Claims Tribunal has erred in not considering that respondent No.3/Insurance Company has issued cover note for issuance of insurance policy on 14/12/2020, hence, liability ought to have been fastened upon the Insurance Company.

8. No one appeared on behalf of respondents No.1 and 2 even after service of notice.

9. Per contra, Shri Tessy Abraham, learned counsel for respondent No.3/Insurance Company submits that learned Claims Tribunal has correctly exonerated the Insurance Company as on the date of accident, insurance certificate was not issued for offending vehicle. Life of cover note is only for a period of 60 days and accident took place much after the period of 60 days, hence, no benefit can be extended under

the cover note. Life of cover note expired prior to date of accident.

10. We have heard learned counsel for the parties and perused the record carefully.

11. So far as the submission made by learned counsel for the appellants/claimants with regard to enhancement of amount of compensation is concerned, perusal of pleadings, evidence and impugned award would show that learned Claims Tribunal has accepted the income of deceased as pleaded in claim application. No amount towards future prospects is added in the income of deceased. Award of future prospects is now well settled by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) wherein it is held that the person who is not in permanent employment and below the age of 40 years, there shall be addition of 40% of the established income towards future prospects. In the case at hand, deceased was not in a permanent employment and below 40 years of age, hence, there shall be addition of 40% of established income towards future prospects. Learned Claims Tribunal has correctly applied deduction and multiplier 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**. Learned Claims Tribunal has awarded Rs.2,05,000/- towards other conventional heads, which in the opinion of this Court, requires to be scaled down because this Court in this appeal is considering enhancement of amount of

compensation so as to award just compensation to the appellants/claimants.

12. 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.7,000/- per month and Rs.84,000/- per annum as assessed by learned Claims Tribunal. There shall be an addition of 40% of established income towards future prospects, which makes the total annual income of deceased as Rs.1,17,600/- (84,000 x 40% = 33,600 and 84,000 + 33,600). Deceased was a bachelor, hence, there shall be deduction of 50% (½). After deducting 50% (1/2) towards personal and living expenses of the deceased, yearly loss of dependency of claimants will come to Rs.58,800/- (1,17,600 / 2 = 58,800). There shall be application of multiplier of 17 as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra), which makes the total loss of dependency as Rs.9,99,600/- (58,800 x 17). Apart from above amount of loss of dependency, claimants will be further entitled to Rs.40,000/- towards filial consortium to the parents, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

13. After the accident, deceased was admitted to Chandulal Chandrakar Memorial Hospital, Bhilai and as per final bill (Ex.P/43), total expenditure incurred towards treatment was

Rs.40,603/-, for which, appellants/claimants are also entitled for. Looking to the date of accident, period of treatment as inpatient and date of death, we find it appropriate to award Rs.10,000/- towards pain and suffering suffered by the parents.

14. Now, appellants/claimants are entitled for total compensation of Rs.11,20,203/- (9,99,600 + 40,000 + 15,000 + 15,000 + 40,603 + 10,000) instead of Rs.9,19,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

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

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

Yogesh