NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1058 of 2015

1. Smt. Gayatri Agnihotri Wd/o Late Ramdev Agnihotri Aged About 50 Years
2. Krishna Dutt Agnihotri S/o Late Ramdev Agnihotri Aged About 24 Years
3. Rishi Kumar Agnihotri S/o Late Ramdev Agnihotri Aged About 21 Years

All R/o Sarkanda, Police Station Sarkanda, Tahsil And District- Bilaspur, Chhattisgarh (Claimants)

---- Appellants

Versus

1. Vasudev Ram, S/o T. Ram R/o 34- B T Road, Calcutta, Police Station -34- Talapar, District Kolkata West Bengal Pin- 700108, Another Address Through Rajkumar Dholai, 9/1/ B Sharat Chand Dhar Road, Kolkata West Bengal Pincode 700090 (Driver Of Alleged Truck Bearing Registration C. G. - W. B. - 23 - A - 8497)
2. Rajkumar Dholai S/o K. Chandra Dholai R/o 39/1/ B, Sharat Chandra Dhar Road, Kolkata West Bengal Pincode 700090 (Owner Of Alleged Truck Bearing Registration C. G. - W. B. - 23- A - 8497)
3. The Oriental Insurance Company Limited Through Divisional Manager, Division Office- In front Of Rajeev Plaza, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh (Insurer Of Alleged Truck Bearing Registration C. G. - W.B. - 23- A – 8497) (Non-Applicants)

---- Respondents

For Appellants	:	Shri HAPS Bhatia, Advocate
For Respondents- 1 and 2	:	None appears
For Respondent-3	:	Shri NK Malviya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

17.08.2021

1. Claimants have filed this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 29.01.2015 passed by the 6th Additional Motor Accident Claims Tribunal, Bilaspur (for short, 'Claims Tribunal') in Claim Case No.108 of 2013, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded Rs.19,42,300/- as compensation with interest @ 7.5% from the date of filing of claim application till its realisation and fastened liability

upon non-applicants jointly and severally to satisfy the amount of compensation.

2. Facts relevant for disposal of this appeal are that on 25.01.2012, Ramdev Agnihotri (since deceased) was travelling on motorcycle of his friend Daljit Singh as pillion rider on NH 53, Arang-Raipur Road. While so, one Truck bearing No.WB23A-8497 (for short, 'offending vehicle') driven by NA1 rashly and negligently, dashed motorcycle and caused accident. In the accident, Ramdev Agnihotri and Daljit Singh, both came under the wheels of offending vehicle and died on the spot.

3. Appellants/claimants, who are widow and children of late Ramdev Agnihotri filed an application under Section 166 of the Act of 1988, pleading therein that on the date of accident, deceased was aged about 54 years, working as Ranger in Forest Department and earning Rs.30,000/- per month. They were dependant upon income of deceased and claimed Rs.45,50,000/- as total compensation.

4. NA 1 and 2 even after service of notice, did not appear before Claims Tribunal and were proceeded *ex-parte*.

5. NA3/Insurance Company submitted reply to Claim application, denying facts pleaded therein. It was further pleaded that on the date of accident, NA1 was not possessed with valid and effective driving license. There was breach of policy conditions. Driver of motorcycle (Daljit Singh) also did not possess with valid and effective driving licence and accident was result of his rash and negligent driving. There was contributory negligence.

6. Learned Claims Tribunal, on appreciation of pleadings and evidence brought on record by respective parties, held that Ramdev Agnihotri died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by NA1. Breach of policy conditions was not found to be proved and awarded Rs.19,42,300/- as total compensation.

7. Shri HAPS Bhatia, learned counsel for the appellants would submit that learned Claims Tribunal correctly assessed monthly income of deceased as Rs.29,510/-, but not added any amount towards future prospects and thereby, awarded lesser amount of compensation towards yearly loss of dependency. He further submits that learned Claims Tribunal awarded only Rs.30,000/- towards other conventional heads, which is also on lower side. He places his reliance upon judgment 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,** (2018) 18 SCC 130 and submits that amount of compensation to be suitably enhanced.

8. Shri Neelkant Malviya, learned counsel for respondent-1/Insurance Company opposes the submissions made by learned counsel for the appellants. He further submits that learned Claims Tribunal taking into consideration entire facts and circumstances of the case, awarded just amount of compensation, which does not call for any interference. In alternate, he further submits that in view of ruling by Hon'ble Supreme Court in case of **Pranay Sethi** (supra), maximum amount of Rs.70,000/- could be awarded on other conventional heads.

9. I have heard learned counsel for the parties and also perused the record of claim case.

10. Income assessed by learned Claims Tribunal is Rs.29,510/- per month and Rs.3,54,120/- per annum is not in dispute. Grounds for enhancement of amount of compensation awarded by Tribunal are, i) non-award of compensation towards future prospects, and ii) award of lesser amount of compensation on other conventional heads.

11. Both the issues have been considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra). Undisputedly, deceased was Government Servant and thereby he is in permanent employment. Hon'ble Supreme Court in case of **Pranay Sethi**(supra), has held that there shall be addition of 15% of established income in salary, where victim/deceased is between the age group of 50-60 years and in permanent employment. Deceased on the date of accident was aged about 56 years.

12. In view of aforementioned ruling of Hon'ble Supreme Court, there shall be addition of 15% of established income towards future prospects. It is ordered accordingly.

13. So far as the 2nd ground raised by appellants with regard to award of compensation on other conventional heads to be on lower side, this issue is also considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra). Hon'ble Supreme Court has specified the heads in which the amount under other conventional heads is to be awarded ie loss of consortium, loss of estate and funeral expenses. Compensation on those heads is also quantified as Rs.40,000/-, Rs.15,000/- and Rs.15,000/-

respectively. Award of compensation under loss of consortium is further clarified by Hon'ble Supreme Court in case of **Nanu Ram** (supra), wherein Hon'ble Supreme Court has explained the types of consortium to be of three types, ie loss of spousal consortium, loss of parental consortium, and loss of fillial consortium. Learned Claims Tribunal has awarded only Rs.10,000/- towards loss of spousal consortium in this case.

14. For the foregoing reasons, the amount of compensation to be awarded to the appellants/claimants requires re-computation and re-calculation which is as under:

(a) Income of deceased has been taken as Rs.29,510/- per month and Rs.3,54,120/- per annum.

(b) By adding 15% of established annual income of the deceased towards future prospects, his yearly income comes to Rs.4,07,238/- {354120 + (354120 x 15/100)}.

(c) Income tax to be deducted as per income tax slab prevailing on the date of accident. Income up to Rs.1,60,000/- was exempted and income exceeding Rs.1,60,000/- to Rs.5,00,000/- is to be charged @ 10%. Upon deducting Rs.1,60,000/- from gross total income, taxable income comes to Rs.2,47,238/- (407238 — 160000). 10% of taxable income comes to Rs.24,723.80ps (247238 x 10/100). After deducting income tax from gross income, yearly net income of deceased comes to Rs.3,82,514.20 ps (407238 — 24723.80).

(d) After deducting 1/3rd from yearly net income of deceased towards personal and living expenses, annual loss of dependency comes to Rs.2,55,009.46 ps {382514.20 — (382514.20 x 1/3)}. Rounded off to Rs.2,55,009/-.

(e)Upon applying multiplier of 9 to the net annual loss of dependency, total loss of dependency comes to Rs.22,95,081/- (255009 X 9).

(f) Apart from above, claimants are further entitled for Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium for sons of deceased, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

15. Now the appellants/claimants are entitled for a total sum of **Rs.24,45,081/-** (2295081 + 40000 + 40000 + 15000 + 15000) as compensation instead of Rs.19,42,300/-, awarded by learned Claims Tribunal.

16. Aforementioned amount of compensation shall carry interest @ 7.5% as awarded by learned Claims Tribunal. Other conditions imposed by learned Claims Tribunal shall remain intact.

17. Appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma