NAFR

HIGH COURT OF CHHATTISGARH BILASPUR
MAC No. 1104 of 2015

Smt. Khatun Bee W/o Late Yusuf Ali, Aged About 49 Years, Occupation- House Wife, R/o Mohaba Bazar, Post Office- Raipur, Police Station- Aamanaka, Raipur, Tahsil and District- Raipur, Chhattisgarh.

---- Appellant

Versus

1. Nawaz Ali S/o Late Yusuf Ali, Aged About 30 Years, Occupation- Vehicle Driver, R/o Sanjay Nagar, Kanker, Post Office and Police Station- Kanker, Tahsil and District- Kanker, Chhattisgarh.
2. Smt. Jaheda Begam W/o Nawaz Ali, R/o Sanjay Nagar, Kanker, Post Office and Police Station- Kanker, Tahsil and District- Kanker, Chhattisgarh.
3. The Oriental Insurance Company Limited, through the Divisional Manager, Divisional Office No. 1, Kutchery Chowk, Jail Road, Post Office- Raipur, Police Station- Gol Bazar, Raipur, Tahsil and District- Raipur, Chhattisgarh.

---- Respondents

For Appellant : Shri Shivendu Pandya, Advocate
For Respondents 1 & 2 : None
For Respondent No.3 : Shri Raj Awasthi, Advocate

(Proceedings through Video Conferencing)
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

06.08.2021

1. Challenge in this appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') is to the impugned award dated 16.04.2015 passed by the Second Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.43 of 2013 whereby learned Claims Tribunal allowed the application filed under Section 166 of the M.V.

Act in part and awarded total sum of Rs.1,97,000/- as compensation in a fatal accident case.

2. Brief facts relevant for disposal of this appeal are that, on 28.05.2012, Yusuf Ali was travelling from Chadimal to Kanker on Jeep bearing No.CG-19/T/0511 (hereinafter referred to as 'offending vehicle'), while so, on the way, due to rash and negligent driving of offending vehicle by non-applicant No.1, it went into the ditch on road side and turned turtle. Yusuf Ali suffered grievous injuries over his person, he was taken to Government Hospital, Kanker where he succumbed to injuries on 04.06.2012 during the course of treatment. Accident was reported to concerned Police Station, based upon which, crime bearing No.135 of 2012 was registered against non-applicant No.1/driver of offending vehicle.

3. Appellant/claimant, widow of deceased Yusuf Ali filed an application under Section 166 of the M.V. Act seeking compensation of Rs.10,50,000/- on different heads pleading therein that on the date of accident, deceased was an able-bodied person, aged about 50 years, working with Mohammad Firoz Construction Company, Kanker as Clerk (*Munim*) and earning Rs.12,000/- per month.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application and

denied the facts pleaded therein with regard to employment and income of deceased. It was pleaded that accident was at the time of use of vehicle for domestic need and deceased was travelling in the offending vehicle as one of the family member. It was further pleaded that non-applicant No.1 was possessed with valid and effective driving licence, offending vehicle was insured with non-applicant No.3, as such, liability to pay any amount of compensation would be upon non-applicant No.3.

5. Non-applicant No.3/Insurance Company submitted its separate reply to claim application, while denying the pleadings made therein, it was pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective driving licence and there was no valid permit and fitness with offending vehicle, as such, offending vehicle was being driven in breach of policy conditions, hence, Insurance Company was not having any liability to indemnify the insured.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by respective parties held that Late Yusuf Ali died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant No.1; breach of policy condition was not found to be proved, awarded Rs.1,97,000/- as total compensation

and fastened liability upon non-applicants jointly and severally to satisfy the amount of compensation with interest at the rate of 6%.

7. Shri Shivendu Pandya, learned counsel for the appellant would submit that claimant has pleaded in claim application that deceased was working as *Munim* with Employer Mohammad Firoz Construction Company, Kanker and his income as Rs.12,000/- per month. Similar statement has been made by claimant in her evidence also. Learned Claims Tribunal without assigning any reason disbelieved the pleadings and evidence of claimant, hence, erred in assessing the income of deceased as Rs.3,000/- per month only for the accident which took place on 28.05.2012. He further submits that learned Claims Tribunal erred in deducting 50% towards personal and living expenses, which is contrary to the law laid down 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,** correct deduction would be 1/3rd when the claimant is spouse of deceased. Claims Tribunal applied the multiplier of 9, which is on lower side as per dictum of Hon'ble Supreme Court in case of **Sarla Verma** (supra), correct multiplier for the deceased within the age group of 46-50 years is 13. It is further contended that learned Claims

Tribunal erred in not adding any amount towards future prospects as held by Hon'ble Supreme Court in case of **Sarla Verma** (supra) and **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**. Looking to age of deceased and nature of occupation, there should be addition of 25% of established income of the deceased for assessing total income on the date of accident. Claims Tribunal erred in awarding Rs.35,000/- only towards other conventional heads. He places his reliance on the 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** for his submission on the enhancement of the amount of compensation on other conventional heads.

8. No one appeared on behalf of respondents No.1 and 2.

9. Per contra, Shri Raj Awashti, learned counsel for respondent No.3/Insurance Company while opposing the submissions made by learned counsel for the appellant would submit that except the pleadings and oral evidence of claimant herself, no other evidence is brought on record by the appellant to prove income as pleaded in claim application. He further submits that even the Employer was not examined as witness. It is contended that in the facts and circumstances of the case, Tribunal has rightly assessed income on

notional basis, which does not call for any interference. However, he does not dispute to the submission of learned counsel for the appellant with regard to application of deduction and multiplier to be in accordance with law laid down by Hon'ble Supreme Court in case of **Sarla Verma** (supra). It is further contended that submission of learned counsel for the appellant with regard to addition of income towards future prospects at the rate of 25% of established income is not correct. He submits that based on the documents and evidence available on record, learned Claims Tribunal has assessed the age of deceased as 50 years and 25% of established income is to be added when deceased/victim comes within the age group of 40-50. In view of evidence available on record, deceased would not fall within the age group of 40-50, but would fall within the age group of 50-60, hence, addition of amount towards future prospects would be only 10% of established income as held by Hon'ble Supreme Court in case of **Pranay Sethi** (supra).

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

11. So far as the ground raised by learned counsel for the appellant with regard to income of deceased is concerned, claimant apart from the pleadings of Rs.12,000/- per month

in claim application and her oral evidence, had not brought into record any other admissible piece of evidence to prove the income of deceased. She has not brought on record any certificate to be issued by Employer nor the Employer was examined in her behalf.

12. In view of above, pleading and oral evidence of appellant for the purpose of ascertaining income, based on salary could not be accepted. In absence of any admissible piece of evidence, learned Claims Tribunal was justified in assessing the income on notional basis. The income if to be assessed on notional basis, then age of deceased, nature of occupation, price index, cost of living based on the place of residence etc. are to be taken into consideration.

13. In the case at hand, learned Claims Tribunal has not assessed the income of deceased appropriately considering all the aforementioned factors and held it to be Rs.3,000/- per month. In the opinion of this Court, taking into consideration the aforementioned factors and place of living of deceased i.e. Raipur, which is capital of State, I find it appropriate to assess the monthly wages of deceased as Rs.4,500/- per month.

14. So far as the ground with regard to deduction towards personal and living expenses of deceased is concerned, Hon'ble Supreme Court in case of **Sarla Verma** (supra) has

considered this issue in detail. Deceased on the date of accident was married. Complainant is wife. In view of above, I find it appropriate to deduct 1/3rd towards personal and living expenses of the deceased. It is ordered accordingly.

15. With respect to multiplier, Hon'ble Supreme Court in case of **Sarla Verma** (supra) has laid down the guidelines for applying the multiplier when the deceased/victim is falling in the age group specified therein. In all the documents available on record, which are documents of criminal case vide Ex.P/3, Ex.P/4 and Ex.P/6, age of deceased is mentioned as 50 years. For age group of 46-50 years, appropriate multiplier has been mentioned as 13 and for age group of 51-55 years as 11, hence, in view of aforementioned ruling of Hon'ble Supreme Court, appropriate multiplier in the facts of the case would be 13 in this case instead of 9 as applied by learned Claims Tribunal. It is ordered accordingly.

16. Award of future prospects has been considered in case of **Sarla Verma** (supra) and **Pranay Sethi** (supra). Hon'ble Supreme Court in case of **Pranay Sethi** (supra) in paragraph 59.4 has held that addition at the rate of 10% of established income where deceased/victim falls within the age group of 50-60 years. Considering the age of deceased

available in record in the instant case, there shall be addition of 10% in the established income towards future prospects.

17. The Hon'ble Supreme Court has further fixed the amount and heads, on which, compensation to be awarded towards other conventional heads. Appellant shall be entitled for the compensation as per ruling of the Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Nanu Ram Alias Chuhru Ram** (supra) towards other conventional heads.

18. In view of above, amount of compensation awarded by learned Claims Tribunal requires re-consideration and re-computation, which is as under :

As discussed above, the income of deceased is taken as Rs.4,500/- per month i.e. Rs.54,000/- per annum. By adding 10% of the income towards future prospects, the total annual income of deceased will come to Rs. 59,400/- (54,000 x 10% = 5,400 and 54,000 + 5,400). Upon deducting 1/3rd towards personal and living expenses, yearly loss of dependency of claimant will come to Rs.39,600/- (59,400 / 3 = 19,800 and 59,400 – 19,800). By applying the multiplier of 13, amount of compensation will come to Rs.5,14,800/- (39,600 x 13). Apart from above, claimant will further be entitled for a sum of Rs.40,000/- towards spousal consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

19. Now, the appellant/claimant is entitled for total compensation of Rs.5,84,800/- (5,14,800 + 40,000 + 15,000 + 15,000) instead of Rs.1,97,000/- 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. The other conditions of award passed by learned Claims Tribunal shall remain intact.

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

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh