

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR
MAC No. 1407 of 2015

1. Ropna Ram S/o Lyndar Ram, Aged About 54 Years Caste Nageshiya
2. Paoul Ram S/o Ropna Ram, Aged About 28 Years Caste Nageshiya
3. Paulash Ram S/o Ropna Ram, Aged About 25 Years Caste Nageshiya
4. All R/o Village Boki, Police Station Jashpur, Tahsil and District Jashpur, Civil and Revenue District Jashpur Chhattisgarh.

---- Appellants

Versus

1. Shankar Gupta S/o Late Laxminarayan Gupta, Aged About 50 Years R/o Manora, District Jashpur Chhattisgarh.
2. Jitendra Munda S/o Dharmu Ram Munda, Occupation Driver, R/o. Purnanagar, Tahsil Jashpur, District Jashpur Chhattisgarh.
3. National Insurance Company Limited Local Branch Office Priyadarshni Nagar, Bilaspur, District Bilaspur Chhattisgarh.

---- Respondents

For Appellants	: Shri Rishikant Mahobia, Advocate
For Respondents No. 1 & 2	: Ms. Monika Singh, Advocate on behalf of Shri Sanjay Agrawal, Advocate
For Respondent No.3	: Shri G.V.K. Rao, Advocate

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

13.08.2021

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 30.07.2015 passed by the Additional Motor Accident Claims Tribunal, Jashpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.01 of 2014 whereby learned Claims Tribunal allowed the application filed under Section

163-A of the M.V. Act in part and awarded total compensation of Rs.2,54,771/- with interest at the rate of 9% per annum from the date of filing of claim application till its realization.

2. Brief facts relevant for disposal of this appeal are that, Bobby Bai was working as Labourer on the tractor bearing No.CG14/A/0315 and trolley bearing No.CG14/A/0316 (hereinafter referred to as 'offending vehicle') of non-applicant No.1. While she was returning on offending vehicle after loading sand, due to rash and negligent driving of non-applicant No.2, she fell down from the trolley and wheels of tractor-trolley ran over her. She succumbed to the accidental injuries. The accident was reported to concerned Police Station, based upon which, Crime No.104 of 2013 was registered against non-applicant No.2/driver of offending vehicle.
3. Appellants/claimants, who are parents and brother of deceased filed an application under Section 163-A of the M.V. Act seeking compensation of Rs.14,25,000/- pleading therein that on the date of accident, deceased was aged about 50 years and earning Rs.3,300/- per month. However, it was pleaded that the daily wages was Rs.130/- per day.
4. Non-applicants No.1 and 2, who are owner and driver of offending vehicle submitted reply to claim application and

denied the facts pleaded therein. They have also denied the fact of accident. It was pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3, as such, liability, if any, to pay the amount of compensation would be upon non-applicant No.3.

5. Non-applicant No.3/Insurance Company submitted its separate reply denying all the pleadings made in claim application. It was further pleaded that non-applicant No.2 was driving the offending vehicle without there being a valid and effective driving licence. Tractor was registered for agricultural use only, but on the date of accident, it was being used for commercial purpose. On the date of accident, sand was being transported, there was breach of policy conditions, hence, Insurance Company is not liable to indemnify the insured.
6. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by respective parties held that Bobby Bai, while sitting on offending vehicle, fell down and died on account of motor accidental injuries suffered by her due to rash and negligent driving of offending vehicle by non-applicant No.2, breach of policy conditions was not found to be proved. While assessing the annual income of deceased as Rs.28,300/-, awarded sum of Rs.2,54,771/- as compensation.

7. Shri Rishikant Mahobia, learned counsel for the appellants would submit that learned Claims Tribunal erred in disbelieving the income as claimed and pleaded by claimants in their claim application to be Rs.3,300/- per month and Rs.39,600/- per annum. He further submits that claimants in their claim application have pleaded that deceased was earning daily wage of Rs.130/-. Learned Claims Tribunal has lost sight of daily wage pleaded in claim application for the year 2012 and erred in calculating the income by assessing working days by deducting holidays, which will not be applicable in case of Labourers as they do not enjoy or avail holidays like the Government servants. It is contended that amount of compensation to be re-computed assessing the income of deceased to be Rs.3,300/- per month. He pointed out that deduction and application of multiplier as well as amount awarded towards other conventional heads are correct.
8. Shri G.V.K. Rao, learned counsel for respondent No.3/Insurance Company supporting the impugned award, would submit that learned Claims Tribunal has rightly assessed the income of deceased, which does not call for any interference.
9. I have heard learned counsel for the respective parties and perused the record carefully.

10. Undisputedly, deceased was working as Labourer. Claimants have pleaded in claim application that she was earning Rs.130/- per day and Rs.3,300/- per month. Manual Labourer like the deceased do not enjoy the holidays like Government servant, but they have to work whenever they get work for earning their livelihood and survival. The assessment of income by learned Claims Tribunal considering the holidays in one calendar year and calculating working days in a year, for assessing income of deceased, in view of aforementioned discussions is not sustainable. The daily wage as pleaded and stated by claimants in the year 2012 as Rs.130/- per day cannot be said to be on higher side.

11. The claimants themselves have pleaded total monthly earning whereby they have admitted that the deceased was not getting work for all days in a month, hence, in the considered opinion of this Court, I find it appropriate to assess the monthly earning of deceased as Rs.3,300/- per month and Rs.39,600/- per annum. After deducting 1/3rd towards personal and living expenses, annual loss of dependency of claimants will come to Rs.26,400/- ($39,600 / 3 = 13,200$ and $39,600 - 13,200$). On the date of accident, deceased was aged about 50 years, hence, appropriate multiplier as prescribed under Schedule-II of the M.V. Act for

the age group of 45-50 years would be 13 (as applied by learned Claims Tribunal). Upon applying the multiplier of 13, amount of compensation will come to Rs.3,43,200/- (26,400 x 13). Apart from above, claimants will further be entitled for a sum of Rs2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate i.e. Rs.4,500/- on other conventional heads as mentioned in Note-III of Schedule-II-II of the M.V. Act instead of Rs.9,500/- as awarded by learned Claims Tribunal.

12. Now, appellants/claimants are entitled for total compensation of Rs.3,47,700/- (3,43,200 + 4,500) instead of Rs.2,54,771/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 9% per annum from the date of filing of claim application till its realization. Other conditions of award passed by learned Claims Tribunal shall remain intact.
13. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-

(Parth Prateem Sahu)
Judge