NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1440 of 2015

1. Smt. Sheela Singh, W/o Late Alok Singh, Aged About 22 Years Occupation House Wife
2. Minor Ku. Khyati Singh, D/o Late Shri Alok Singh, Age 3 And Half Years, Through Natural Guardian Mother Smt. Sheela Singh, W/o Late Shri Alok Singh

   Both R/o Kirodimal Nagra, Ucchbhitti Road, Ward No. 9, Raigarh, Tahsil Raigarh, District Raigarh Chhattisgarh ....Claimants

---- Appellants

Versus

1. Manoj Kumar Singh S/o Ramlakhan Singh, Aged About 32 Years Occupation Driver, R/o Belhara, P. S. Vishrampur, District Pallamu, Jharkhand Presently R/o. House Of Sudhakar Patel, Kotra Road, Raigarh, Tahsil And District Raigarh Chhattisgarh.....Driver
2. Iqbal Singh S/o Kabul Singh, R/o Through Anoop Road Carrier, J S P L, Transport Nagar, District Raigarh Chhattisgarh..........Owner
3. Universal Sompo General Insurance Company Ltd. Through Branch Manager, Universal Sompo General Insurance Company Ltd. Registered Office Unit 4, Fourth Floor, Sangam Complex 127, Andheri Kurla Road, Andheri East Mumbai Maharastra
4. Madhav Singh, S/o Guman Singh, Aged About 48 Years
5. Smt. Kaveri Singh W/o Madhav Singh, Aged About 42 Yrs, Claimant-2

   Both R/o Kirodimal Nagar, Ucchbhitti Road, Ward No. 9, Raigarh, Tahsil Raigarh, District Raigarh Chhattisgarh..........Claimant-3

---- Respondents/Non-Applicants

For Appellants	:	Shri Amit Sharma, Advocate
For Respondents- 1 and 2	:	None appears
For Respondent-3	:	Shri Tessy Abraham, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

31.08.2021

1) Claimants have preferred this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 08.04.2015 passed by the Motor Accident Claims Tribunal, Raigarh (For short, 'Claims Tribunal') in Claim Case No.65 of 2013, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in

part, awarded Rs.4,90,096/- as total compensation along with interest @ 6% from filing of claim application till its realisation in a fatal accident case.

2) Facts relevant for disposal of this appeal are that on 09.06.2013, at about 4.30 pm, Alok Singh was travelling on Motorcycle along with his friend on Tamnar Road. On the way, one Truck/Trailor bearing No.CG 13D-7811 (hereafter, referred to as 'offending vehicle'), driven by NA1 rashly and negligently, dashed Motorcycle of Alok Singh and caused accident. In the accident, he suffered grievous injuries over his person and succumbed to injuries on the spot.

3) Claimants, who are widow, child, and parents of deceased filed application under Section 166 of the Act of 1988 seeking total compensation of Rs.46,90,000/- against death of Alok Singh, pleading therein that on the date of accident deceased was working as contractor and earning Rs.10,000/- per month. Claimants were dependants upon income of deceased.

4) NA1 and NA2, Driver and Owner of offending vehicle submitted reply to claim application resisting the claim. It was further pleaded that on the date of accident, offending vehicle was insured with NA3, and NA1 was possessed with valid and effective driving license on the date of accident. Amount of compensation claimed by the appellants is highly exaggerated.

5) NA3/Insurance Company submitted reply to claim application denying the claim and further pleaded that on the date of accident NA1,

driver of offending vehicle was not possessed with valid and effective driving license. Amount of compensation claimed is highly exaggerated. Further it was pleaded that deceased was also not possessed with valid and effective driving license to drive Motorcycle. It was pleaded that there was breach of policy conditions and prayed for exoneration of Insurance Company from its liability.

6) Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, held that deceased suffered motor accidental injuries on account of rash and negligent driving of offending vehicle by NA1, negligence on the part of deceased and breach of policy conditions were not found to be proved and awarded Rs.4,90,096/- as total compensation by assessing income of deceased as Rs.5,000/- per month.

7) Shri Amit Sharma, learned counsel for appellants would submit that learned Claims Tribunal erred in awarding meagre sum of compensation, overlooking facts of case. He submits that Tribunal has not considered pleading and evidence brought on record by the appellants with respect to nature of occupation of deceased as Contractor, his earning and assessed his income as Rs.5,000/- per month only. Claims Tribunal ought to have assessed income of deceased as pleaded in claim application and stated in their evidence. Deduction of 1/3rd is applied instead of 1/4th as number of claimants are 4. He also submits that Tribunal erroneously, applied multiplier of 12 instead of 18 as on the date of accident, deceased was only 23 years of age. No amount of compensation has been awarded towards future prospects and amount of compensation awarded on other

conventional heads is also on lower side. He submits that amount of compensation to be suitably enhanced.

8) No one appears for respondents-1 and 2.

9) Shri Tessy Abraham, Advocate appearing on behalf of Shri Amrito Das, counsel for respondent-3 submits that appellants failed to prove nature of occupation of deceased by placing documentary or admissible piece of evidence before Tribunal. Tribunal taking into consideration entire facts and evidence available on record, has generously assessed income of deceased as Rs.5,000/- per month, which does not call for any interference. Compensation awarded is just and proper in facts of the case.

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

11) So far as the submissions of learned counsel for the appellant with respect to assessment of income of deceased on the date of accident is concerned, perusal of record of claim case would show that apart from pleadings in claim application that deceased was working as Contractor, earning Rs.10,000/- per month, claimants have examined appellant-1 as AW1 and one Guddu Vishwakarma as AW2 to prove their pleadings.

12) AW1, widow of deceased in her cross-examination, showed her ignorance regarding maintaining records of deceased with respect to his occupation and income. AW2 in his cross-examination has admitted occupation of deceased as Contractor, based on information supplied to

him by the deceased. Apart from this, no other witness has been examined before Tribunal to prove income of deceased. There is no admissible piece of evidence to prove the occupation of deceased.

13) In view of nature of evidence brought on record, submissions of learned counsel for the parties, and the date of accident, I do not find any error on the part of Tribunal in assessing income of deceased as Rs.5,000/- per month. The submission of learned counsel for appellant that the Tribunal erred in assessing income of deceased on lower side is not sustainable, it is repelled.

14) So far as 2nd submission made by learned counsel for the appellants with respect to application of multiplier, it is not in dispute that application of multiplier is to be applied based on number of dependants upon deceased as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121 .

15) In the case at hand, claimants are widow, child, mother and father of deceased. Father of deceased ie appellant-3/claimant-3 has been shown to be aged about 48 years on the date of filing of claim petition, hence, in the opinion of this Court, father of deceased cannot be accepted as one of dependants. Hence, there are only 3 dependants of deceased.

16) In view of ruling of Hon'ble Supreme Court in case of **Sarla Verma** (supra), Tribunal justified in applying deduction of 1/ 3rd in facts of case, hence it is affirmed.

17) So far as application of multiplier of 12 is concerned, this issue is also considered and decided by Hon'ble Supreme Court in case of **Sarla Verma** (supra), and issued guidelines for application of multiplier based on age group of deceased on the date of accident. Undisputedly, on the date of accident, deceased was aged about 23 years. Deceased was in the age group of 21 to 25 years, hence, in view of Hon'ble Supreme Court decision as cited above, appropriate multiplier would be 18, instead of 12, applied by Tribunal. It is ordered accordingly.

18) Award of compensation towards future prospects has been considered and decided by Hon'ble Supreme Court in case of **National Insurance Company Vs Pranay Sethi** reported in (2017) 16 SCC 680 and held that where the deceased/victim was below the age group of 40 years and not in permanent employment, there shall be addition of 40% of established income for calculating total income of deceased on the date of accident. Hence, there shall be addition of 40% of established income of deceased. It is ordered accordingly.

19) Award of compensation on other conventional heads was also considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and specified the heads as also quantified the amount of compensation on each head, which are loss of consortium, loss of estate and funeral expenses.

20) Hon'ble Supreme Court in case of **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others,** (2018) 18 SCC 130 has further explained types of loss of consortium to be three

types ie loss of spousal consortium, loss of parental consortium, loss of fillial consortium.

21) Claimants shall be entitled for compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

22) For the foregoing reasons, amount of compensation to be awarded to the claimants requires re-computation and re-calculation which is as under:

a) Income of deceased has been taken as Rs.5,000/- per month and Rs.60,000/- per annum.

b) By adding 40% of established income of the deceased towards future prospects, yearly income of the deceased comes to Rs.84,000/- {60000 + (60000 x 40/100)}.

c) After deducting 1/ 3rd from the actual income of deceased towards personal and living expenses, annual loss of dependency comes to Rs.56,000/- {84000 — (84000 x 1/3)}.

d) Upon applying multiplier of 18 to the annual loss of dependency, total loss of dependency comes to Rs.10,08,000/- (56000 X 18).

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

23) Now, appellants/claimants will be entitled for Rs.11,58,000/-, as compensation instead of Rs.4,90,096/- awarded by the Tribunal.

24) Aforementioned amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization.

25) Shri Amit Sharma, learned counsel for the appellants submits that after demise of husband, A1 widow of deceased and her in-laws are residing separately. As it is held that father of deceased is not dependant upon income of deceased, no further amount shall be disbursed in favour of respondent-4/claimant-3.

26) In view of discussion in preceding paragraph and submission of learned counsel for appellants, Father of deceased shall not be entitled for any further sum from enhanced amount of compensation. Other conditions of the impugned award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
JUDGE

padma