NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 453 of 2015

1. Smt. Mela Bai, W/o Wd/o Late Prajapati, aged about 48 years
2. Vinod Kumar, S/o Late Prajapati, now aged about 26 years.
3. Rajesh Kumar, S/o Late Prajapati, now aged about 24 years
4. Ku. Sukrita, D/o Late Prajapati, now aged about 18 years.

All are R/o Qr. No.LCH/54, Main Club SECL Colony, Rajgamar, Civil & Revenue District Korba (CG)

---- Appellants/Claimants

Versus

1. Sumrit Lal, S/o Tula Ram, now aged about 26 years, R/o Qr. No. LCH/29, Main Club SECL Colony, Rajgamar, Civil & Revenue District Korba (CG) [Driver]
2. Vijay Kumar, S/o Budhram Manjhwar, aged about 43 years, R/o Mudapar, Civil & Revenue District Korba (CG) [Owner]
3. The Oriental Insurance Company Limited, Through- Jone Manager, Jone Office, Gitanjali Bhawan, Old Bus Stand, Korba, Civil & Revenue District Chhattisgarh. [Insurer]

---- Respondents

For Appellants	:	Mr. Mirza Kaiser Baig, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Mr. Raj Awasthi, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

02/02/2021

1. Appellants-claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by the learned Motor Accident Claims Tribunal, Korba (for short 'the Claims Tribunal') vide award dated 16.2.2015 passed in Claim

Case No.36/2011 whereby the Claims Tribunal has partly allowed application and awarded total compensation of Rs.1,81,000/- along with interest @ 8% p.a. from the date of filing of application till realization.

2. Facts relevant for disposal of this appeal, in brief, are that on 19.1.2011 at about 8.30 p.m. Dinesh Kumar (since deceased) was returning home from Rajgamar Market, when he reached on Main Road, Rajgamar, one Scorpio vehicle bearing registration number CG16/9072 (for short 'the offending vehicle'), driven by non-applicant No.1 in a rash and negligent manner, dashed said Dinesh Kumar causing grievous injuries on his head and other parts of body, which resulted in his death. Accident was reported to the concerned police station based on which an offence was registered against non-applicant No.1-driver of offending vehicle.

3. Claimants, who are parents, brother & sister of deceased respectively, filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking Rs.52,50,000/- as compensation mentioning therein that on the date of accident, the deceased was 25 years old, he was engaged as 'General Mazdoor' in Rajgamar Colliery, SECL, Korba and getting Rs.15,000/- per month.

4. Non-applicant No.1 filed reply to the application pleading therein that the deceased was granted compassionate appointment, but due to his continuous absent, he was placed under suspension, hence he was not having any income or

getting any salary from SECL. No accident had taken place with the offending vehicle. Deceased met with accident with some other vehicle for which he himself was responsible. Claim application has been filed on false grounds claiming exaggerated amount of compensation. No document showing income and age of the deceased has been filed.

5. Non-applicant No.3 Insurance Company filed its reply to the application denying the pleadings made therein, except the admitted facts. It was pleaded that the deceased was not doing any work, as such, he was not having fixed income. Intimation regarding accident was not given in time to the Insurance Company. The offending vehicle was being plied in breach of essential conditions of insurance policy as on the date of accident, the driver of offending vehicle was not possessed with a valid and effective driving license and even there was no valid permit to ply offending vehicle. Hence, the insurance company is not liable to indemnify the insured.

6. Upon appreciation of pleadings and evidence placed on record by the respective parties, the Claims Tribunal while holding that accident took place due to rash and negligent driving by non-applicant No.1-driver which resulted in death of said Dinesh Kumar, has partly allowed claim application, awarded an amount of Rs.1,81,000/- as compensation and fastened liability upon the Insurance Company to satisfy the impugned award by holding that there was no breach of any of the conditions of insurance policy.

7. Mr. Mirza Kaiser Baig, learned counsel appearing on behalf of claimants/ appellants submits that the claimants have specifically pleaded in their application and also statement that on the date of accident, the deceased was working on permanent post of 'General Mazdoor' with SECL and earning Rs.15,000/- per month. The occupation and income of deceased as permanent General Mazdoor stands established from the statement of NAW3-1 Lalit Kumar, Senior Officer, Personnel/ Administration, Rajgamar Colliery, SECL, Korba, who has admitted in his statement that deceased was paid Rs.543.72 paise per day as wages and he was permanent employee of the SECL. However, the Claims Tribunal disbelieved the evidence available on record and fixed annual income of deceased at Rs.24,000/- by taking Rs.543.72 paise as per day wages and 44 working days in a year. He submits that at the time of accident, the deceased was in permanent employment and below the age of 40 years, therefore, the claimants are entitled for an addition of 50% towards future prospects, but the Claims Tribunal has not awarded any amount towards future prospects. He further submits that the multiplier applied to compute the loss of dependency is incorrect. The amount awarded under other conventional heads is also on lower side. He prays that the amount of compensation be enhanced accordingly.

8. Per contra, Mr. Raj Awasthi, learned counsel representing respondent No.3- Insurance Company would argue that NAW3-1 has specifically stated in his evidence that the

employees like the deceased were paid wages on the basis of their attendance and from January, 2009 to the date of accident i.e. 19.1.2011, the deceased was absent from his duties. Thus, it is evident that on the date of accident, the deceased was not having any permanent income, hence, the amount of compensation awarded by the Claims Tribunal is just and reasonable in the given facts and circumstances of case and need not be enhanced.

9. We have heard learned counsel for the parties and perused the records of the Claims Tribunal.

10. So far as income of the deceased is concerned, perusal of certificate Ex.D-5 issued by the South Eastern Coalfields Ltd., Rajgamar Colliery, District Korba reveals that the deceased was getting wages of Rs.543-72 paise per day. Lalit Kumar, Senior Officer, Personnel/ Administration, Rajgamar Colliery, SECL, Korba was examined as NAW3-1 and this witness has stated in his statement that deceased was permanent employee of the SECL of General Mazdoor category and was getting wages of Rs.543.72 paise per day. True it is that the deceased might not have worked prior to the date of accident due to his ailment, as stated by NAW3-1, but the fact remains that he was permanent employee of SECL and getting Rs.543.72 paise per day as wages. In such a situation, the Claims Tribunal has erred in assessing income of deceased by taking 44 working days in a year. During a month, normally a daily wage labourer will get employment for a maximum

period of 26 days excluding Sundays. Deceased was in permanent employment. Hence, monthly income of deceased comes to Rs.14,136.72 paise, which is rounded off to Rs.14,137/- (543.72 x 26). Accordingly, we reckon income of deceased as Rs.543.72 per day and Rs.14,137/- per month.

11. As regards the future prospects, in the matter of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, Hon'ble Supreme Court while dealing with the issue of grant of future prospects has held thus:

> "59.3.While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

In the case hand, as per pleadings in the application, the deceased was in permanent employment of SECL as General Mazdoor and was below the age of 40 years, which is also evident from PAN Card of deceased filed along with claim application in which his date of birth is mentioned as 8.5.1985, therefore, in view of law laid down by the Apex Court in **Pranay Sethi's case (supra)**, the claimants/appellants are entitled for an additional amount of 50% of established income of the deceased as future prospects. The Claims Tribunal erred in not awarding any amount towards future prospects. In view of the judgment of Apex Court in **Pranay Sethi's case (supra)** and in the given facts of the case, 50% of the income of the deceased is to be added towards future prospects. It is ordered accordingly.

12. Perusal of the impugned award reveals that for the purpose of calculating loss of dependency, the Claims Tribunal applied multiplier of '13', which in the considered opinion of this Court is incorrect. Looking to age of the deceased, which was 26 years on the date of accident, the Claims Tribunal should have applied multiplier of '17', as has been held by Hon'ble Supreme Court in the matter of **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121** that where the deceased is between the age group of 26 to 30 years, multiplier of '17' is to be taken for the purpose of computation of loss of dependency. Therefore, the proper multiplier to be applied for assessing the loss of dependency would be '17' and not '13' as applied by the Claims Tribunal.

13. The Claims Tribunal has awarded a total sum of Rs.25,000/- under other conventional heads i.e. Rs.10,000/- towards funeral expenses, Rs.10,000/- towards loss of love, Rs.5,000/- towards loss of estate, which in the opinion of this Court is on lower side and the same is required to be enhanced in view of decision of the Apex Court in the matters of **Pranay Sethi (supra)** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**.

14. For the foregoing reasons, we propose to recompute the amount of compensation payable to claimants/appellant.

15. The income of deceased is taken as Rs.14,137/- per month and Rs.1,69,644/- per annum, upon adding 50% of established income towards future prospects, total income comes to Rs.2,54,466/- (169644+84822). Accordingly, annual income of deceased for the purpose of calculating compensation comes to Rs.2,54,466/-.

16. From the annual income of deceased, income tax as payable is to be deducted for computing net income of the deceased. During financial year 2010-11 tax slab is as under:-

- Income upto Rs.1,60,000/- is exempted.
- Income exceeding Rs.1,60,000/- upto Rs.5,00,000/- is taxable @ 10%.

Total annual income of deceased is Rs.2,54,466/-. As per tax slab, income upto Rs.1,60,000/- was exempted and after which income upto Rs.5,00,000/- was to fall in the tax slab of 10%. Thus, taxable income of deceased would be Rs.94,466/- (254466-160000) and accordingly the income tax payable comes to Rs.9446=60 paise, which is rounded off to Rs.9,447/- (10% of 94466). After deducting income tax of Rs.9,447/- from the annual income of deceased, net income comes to Rs.2,45,019/- (254466-9447). Out of this amount, half is to be deducted towards personal & living expenses of the deceased, as deducted by the Claims Tribunal, and after deducting one-half, annual loss of dependency would come to Rs.1,22,509=50 paise, which is rounded off to Rs.1,22,510/-. By applying multiplier of 17, as held above, to annual loss of dependency, total loss of dependency would come to Rs.20,82,670/- (122510 x 17). Besides this, in the light of decisions of Supreme Court in the matters of **Pranay Sethi (supra) and Magma Insurance (supra),** appellant No.1, mother of deceased, is entitled for a sum of Rs.40,000/- towards parental consortium. Besides this, the appellants are also entitled to get a sum of Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Thus, claimant / appellants are entitled for a total sum of Rs.21,52,670/-. This amount of compensation shall carry simple interest @ 8% p.a. from the date of filing of claim application till the date of its realization. Rest of the conditions as imposed by the Claims Tribunal shall remain intact.

17. In the result, the appeal stands allowed and the impugned award stands modified to the extent indicated above.

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

roshan/-