NAFR

HIGH COURT OF CHHATTISGARH BILASPUR
M. A. (C) No. 114 of 2015

1. Smt. Pushpa Nishad W/o Late Shatruhan Nishad, Aged About 26 Years.
2. Ku. Gangotri D/o Late Shatruhan Nishad, Aged About 8 Years.
3. Ku. Heena D/o Late Shatruhan Nishad, Aged About 6 Years.
4. Khagendra Kumar S/o Late Shatruhan Nishad, Aged About 3 Years.
5. Ku. Ritu D/o Late Shatruhan Nishad, Aged About 1 Year.
   Appellant No.2 to 5 through legal guardian mother- Smt. Pushpa Nishad W/o Late Shatruhan Nishad.
6. Aanand Ram Nishad S/o Late Bhagela Nishad, Aged About 60 Years.
7. Smt. Sahodra Bai W/o Aanand Nishad, Aged About 55 Years.
   All R/o Village- Mohada, Thana- Hirri, Tahsil Bilha, District Bilaspur, Chhattisgarh.

---- Appellants

Versus

1. Sandeep Kumar Khanuja S/o Nandlal Khanuja, Aged About 32 Years, R/o Village- Agrasen Ward, Bilha, Thana and Tahsil Bilha, District Bilaspur, Chhattisgarh.
2. Manager Ifco Tokio General Insurance Company Limited, Branch Office, 1st Tal Gailekshi Hights Near, I.C.I.C.I. Bank Behind Byapar Bihar, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellants	: Shri A.L. Singroul, Advocate
For Respondent No.1	: Shri Sachin Singh Rajput, Advocate
For Respondent No.2	: None

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

13.01.2021

1. Appellants/claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 25.09.2014 passed by the Second Additional Member to the Court of First Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.75 of 2014 whereby learned Claims Tribunal allowed an application filed under Section 163-A of the M.V. Act in part and awarded Rs.4,20,000/- as total compensation in a fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 06.01.2014, at about 11.15 AM, when Shatruhan Nishad was unloading the Trailer bearing No.CG-04/J/5278 (hereinafter referred to as 'offending vehicle') loaded with ballast, due to mechanical fault (breaking of pin of Trolley), Trolley attached with Trailer turned upside down, due to which, Shatruhan Nishad came under jack-rod of Trolley, suffered grievous injuries and died on spot.

3. Appellants/claimants, who are widow, children and parents of deceased Shatruhan Nishad filed an application under Section 163-A of the M.V. Act seeking compensation of Rs.26,50,000/- pleading therein that on the date of accident, deceased was working as driver of offending vehicle and earning Rs.3,300/- per month. It was further pleaded that after death of Shaturhan Nishad, they are deprived of earning of deceased upon which, they were dependent for their livelihood.

4. Non-applicant No.1 did not appear before learned Claims Tribunal and was proceeded *ex parte*.

5. Non-applicant No.2/Insurance Company submitted reply to claim application, while denying adverse pleadings made therein, pleaded that accident was result of self negligence of deceased and he was not possessed with valid and effective driving licence, as such, there was breach of policy conditions.

6. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, allowed the application in part holding that breach of policy conditions was not found to be proved and awarded Rs.4,20,000/- as total compensation.

7. Shri A.L. Singroul, learned counsel for the appellants/ claimants submits that learned Claims Tribunal without any reason has disbelieved the income of deceased as Rs.40,000/- per annum overlooking the pleadings and evidence brought on record by the appellants/claimants and nature of employment of deceased on the date of accident i.e. driver of 'Heavy Goods Vehicle'. The claimants have placed on record copy of driving licence of deceased, which was not considered by learned Claims Tribunal, in which, it is shown that deceased was authorized to drive 'Light Motor Vehicle, PSV BUS and Transport Vehicle' and further the date of accident to be of 06.01.2014 for assessing the income of deceased. He pointed out that learned Claims Tribunal has not awarded any amount of compensation towards other conventional heads as held by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**.

8. Per contra, Shri Sachin Singh Rajput, learned counsel for respondent No.2/Insurance Company supported the award impugned and submits that claimants have failed to prove the income of deceased by producing admissible piece of evidence in this regard, hence, learned Claims Tribunal has rightly assessed the income of deceased on notional basis. He further submits that claim application was filed under Section 163-A of the M.V. Act and under aforementioned provision, amount of compensation is required to be calculated in terms of Second Schedule appended to the M.V. Act.

9. We have heard learned counsel for the respective parties and perused the record carefully.

10. There is no dispute with regard to coverage of risk, insurance of offending vehicle and liability to satisfy the amount of compensation. This appeal is filed by the appellants/claimants seeking enhancement of amount of compensation.

11. Perusal of pleadings of claim application would show that appellants/claimants pleaded that deceased was working as driver of offending vehicle and earning Rs.3,300/- per month. True it is that, appellants/claimants have not placed on record any material or evidence to prove the income of deceased, but copy of driving licence is available on record along with unexhibited document at page No.1, wherein validity of transport licence shown up to 07.05.2016 and accident took place on 06.01.2014. In view of aforementioned material available on record, pleadings and statement/evidence of appellants/claimants that deceased was driver of offending vehicle cannot be ignored. In our considered view, learned Claims Tribunal has not considered the entire material available on record and has erroneously held the income of deceased as Rs.3,000/- per month only. In cases under the M.V. Act, if the income of victim is not proved in accordance with law then it is bounden duty of the Tribunal or Court to assess the income of victim/deceased on notional basis taking into consideration the relevant factors like date of accident, price index, wage structure and cost of living etc. Taking into consideration the aforementioned factors and evidence available on record, we find it appropriate to assess the income of deceased as Rs.3,300/- per month as pleaded by appellants/claimants.

12. So far as the second submission made by learned counsel for the appellants/claimants with regard to application of deduction and award of amount of compensation on other conventional heads as well as non-award of future prospects is concerned, application filed under Section 163-A of the M.V. Act is to be considered and decided in accordance with Second Schedule. In second Schedule, deduction has been shown to be 1/3rd towards personal and living expenses only and there is no other factor of deduction mentioned considering the number of dependents/family members of the deceased. Amount of compensation to be awarded on other conventional heads is also specified and quantified.

13. For the foregoing reasons, we do not find any merit in the submission made by learned counsel for the appellants/claimants that learned Claims Tribunal erred in not awarding future prospects, applying wrong deduction towards personal and living expenses and awarding meagre amount of compensation towards other conventional heads because learned Claims Tribunal has already awarded Rs.12,000/- towards other conventional heads. The said submission is hereby repelled.

14. As we have held the income of deceased to be Rs.3,300/- per month, amount of compensation to be awarded to the appellants/claimants requires re-computation and recalculation, which is as under :

The income of deceased is taken as Rs.3,300/- per month and Rs.39,600/- per annum. After deducting 1/3rd towards personal and living expenses of the deceased, yearly loss of dependency of appellants/claimants will come to Rs.26,400/- (39,600 / 3 = 13,200 and 39,600 – 13,200). Age of the deceased has been shown to be 28 years, hence, appropriate multiplier would be 18 instead of 17 as applied by learned Claims Tribunal. Upon applying the multiplier of 18, total loss of dependency of appellants/claimants will come to Rs.4,75,200/- (26,400 x 18). Apart from above amount of loss of dependency, claimants will be further entitled to Rs.5,000/- towards loss of spousal consortium, Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses.

15. Now, appellants/claimants are entitled for total compensation of Rs.4,84,700/- (4,75,200 + 5,000 + 2,500 + 2,000) instead of Rs.4,20,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 7% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

16. In the result, appeal filed by the appellants/claimants is allowed in part. Impugned award is modified to the extent as indicated herein-above.

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

Yogesh