NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 39 of 2015

John Mathai son of late Joseph Yohanan, aged about 53 Years, R/o House's Name Mayukulathu Modiyali, Post Kidanganura, District Pathanamthita (Keral), PIN- 589514.

---- Appellant

Versus

1. Naveen Singh Rajput, son of Late Devnarayan Singh, aged about 28 years R/o R.No. 1657, Police Line, Durg (C.G.), Permanent Address Kuwa Chowk, Pachari Para, Durg, District Durg (C.G.).

2. Director General of Police Raipur, District Raipur, (C.G.**).**

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For Appellant	: Shri Vinod Kumar Sharma, Advocate
For Respondent No.1	: Dr. Saurabh Kumar Pande, Advocate
For Respondent No.2	: Shri Siddharth Dubey, Dy. Govt. Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

07.01.2021

1. Appellant/claimant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 28.11.2014 passed by the 6th Additional Motor Accident Claims Tribunal District Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.10 of 2014 whereby learned Claims Tribunal

allowed the application filed under Sections 166 and 140 of the M.V. Act in part and awarded Rs.14,90,247/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, on 31.12.2013, Sheri John was travelling on two-wheeler along with her son. While so, when she reached near Sector-9, M.D. Square, one P.C.R. Vehicle of Police Department bearing No.CG-03/3898 (hereafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently dashed two-wheeler and caused accident. In the aforesaid accident, Sheri John suffered grievous internal injuries over her person and died. Accident was reported to concerned Police Station, based upon which, crime No.673 of 2013 was registered against non-applicant No.1/driver of offending vehicle.

3. Appellant, who is husband of deceased Sheri John filed an application under Sections 166 and 140 of the M.V. Act pleading therein that on the date of accident, deceased Sheri John was aged about 38 years, working in CISF Department, earning Rs.28,000/- per month; due to untimely death of his wife, he suffered loss of consortium as well as financial loss and claimed Rs.55,01,000/- as total compensation on different heads.

4. Non-applicant No.1 who is driver of offending vehicle submitted reply to claim application pleading therein that

non-applicant No.1 was appointed on the post of Constable and working as driver.

5. Non-applicant No.2 is employer of non-applicant No.1 submitted reply to claim application pleading therein that non-applicant No.1 was driving the offending vehicle cautiously with full responsibility. On account of mechanical fault of offending vehicle and further on account of negligence on the part of deceased, accident took place, hence, claimant is not entitled for any amount of compensation.

6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal allowed the application filed under Sections 166 and 140 of the M.V. Act in part and awarded Rs.14,90,247/- as total compensation on different heads.

7. Shri Vinod Kumar Sharma, learned counsel for the appellant submits that learned Claims Tribunal has awarded meager amount of compensation in the facts and circumstances of the case. Learned Claims Tribunal has erred in applying the multiplier of 13 instead of 15 as held 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**. Learned Claims Tribunal has added only 30% towards future prospects, which is on lower side and

submits that amount of compensation be enhanced suitably.

8. Controverting the submissions made by learned counsel for the appellant, Dr. Saurabh Kumar Pande, learned counsel for respondent No.1 as well as Shri Siddharth Dubey, learned Deputy Government Advocate representing the State/respondent No.2 submit that learned Claims Tribunal has in fact awarded more amount of compensation than what, for which, appellant is entitled. Learned Claims Tribunal has applied correct multiplier of 13 considering the age of deceased to be 48 years as mentioned in *Naksha Panchayatnama* (Ex.P/5) and much more amount is awarded on other conventional heads.

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

10. Perusal of pay-slips (Exs.P/11 to P/14) and last pay-slip of December 2013 (Ex.P/16) would show that gross pay of deceased as Rs.27,169/-. Learned Claims Tribunal though have considered monthly income of deceased to be Rs.27,169/-, but erroneously arrived at a finding that deceased was expending upon herself 75% of her income and giving only 25% for the house hold expenditures and calculated the amount of Rs.6,732/- per month towards dependency.

11. The amount of dependency as calculated by learned Claims

Tribunal in view of the ruling rendered by Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra) and **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** is erroneous, and not sustainable. The Hon'ble Supreme Court has considered the deduction of 1/3rd when the deceased is a married person and claimants are spouse and other family members.

12. In view of aforementioned settled law on the point, we are of the view that there will be deduction of 1/3rd from the monthly income of deceased towards personal and living expenses and further there shall be deduction of income tax applicable as per prevailing slab on the date of accident to arrive at the net income for calculating the amount of compensation.

13. Learned Claims Tribunal has correctly added 30% of the established income towards future prospects. Learned Claims Tribunal has awarded Rs.1,25,000/- towards other conventional heads i.e. Rs.1,00,000/- towards loss of estate and loss of consortium and further Rs.25,000/- towards funeral expenses, which in view of the rulings rendered by 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** requires to be recalculated.

14. For the forging reasons as well as the facts and circumstances of the case, we deem it fit and proper to recompute and recalculate the amount of compensation as under :

The income of deceased as per salary slip to be taken as Rs.27,169/- and yearly income will come to Rs.3,26,028/- (27,169 x 12). After adding 30% of established income towards future prospects, total yearly income will be Rs.4,23,836/- (3,26,028 + 97,808). From the yearly income of deceased, there will be statutory deduction of income tax. In the year 2013 according to income tax slab, income upto Rs.2,00,000/- is exempted and on the income exceeding between Rs.2,00,000/- to 5,00,000/-, 10% of the income is required to be paid as income tax. In view of above, from the yearly income of deceased, after deducting Rs.2,00,000/- towards exemption, taxable income comes to Rs.2,23,836/-. There will be a tax @ 10% on the taxable income. After deducting 10% towards income tax i.e. Rs.22,383.6, rounded off to Rs.22,384/- (2,23,836 x 10%), the net income of the deceased will come to Rs.4,01,452/- per annum (4,23,836 – 22,384). There will be a deduction of 1/3rd towards personal and living expenses. After deducting 1/3rd towards personal and living expenses i.e. Rs.1,33,817.3 rounded off to Rs.1,33,817/- (4,01,452 / 3), yearly loss of dependency of the claimant will come to

Rs.2,67,635/- (4,01,452 – 1,33,817). Upon applying the multiplier of 13, the amount of compensation will come to Rs.34,79,255/- (2,67,635 x 13). Apart from the above amount of compensation, the appellant is also entitled for a sum of Rs.40,000/- towards spousal consortium (payable to the spouse because of the death of the partner), Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses.

15. Now, the appellant is entitled for total compensation of Rs.35,49,255/- (34,79,255 + 40,000 + 15,000 + 15,000) instead of Rs.14,90,247/- 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. Other conditions imposed by learned Claims Tribunal shall remain intact.

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

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

Yogesh