NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1295 of 2015

1. Kamla Bai Wd/o Late Nakchhed Yadav, Aged About 38 Years
2. Faguram S/o Mahnguram Yadav, Aged About 60 Years
3. Fagni Bai W/o Faguram Yadav Aged About 55 Years

All R/o Village Launda, Thana Pathariya, District Mungeli Chhattisgarh

---Appellants/Claimants

VERSUS

1. Laxman Nishad S/o Baliram Nishad, aged about 46 years, R/o Prabhat Chauk, Chingrapara, Thana Sarkanda, Distt. Bilaspur Chhattisgarh **-----Driver**
2. Gulshan Rishi S/o late Mulkraj Rishi, R/o Green Park Colony, Jarhabhata, Thana Civil Line, Bilaspur Chhattisgarh

   -----Owner
3. Branch Manager, National Insurance Company Ltd. Branch Office Taha Complex, Vyapar Vihar Road, infront of Dena Bank, Distt. Bilaspur Chhattisgarh

----Respondents

For Appellants	:	Mr. Samir Singh, Advocate
For Respondent 2	:	Mr. Rajkamal Singh, Advocate
For Respondent 3	:	Mr. Dashrath Gupta, Advocate

(*proceedings through Video Conferencing)*

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

23/08/2021

1. Challenge in this appeal is to the impugned award dated 16.07.2015 passed by learned 4th Additional Motor Accident Claims Tribunal, Bilaspur, C.G. (for short "Claims Tribunal") in claim case no. 368/2014 whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 in part, awarded Rs. 4,08,000/- as total

compensation in a fatal accident case; while exonerating the Insurance Company from the liability to satisfy the amount of compensation, fastened liability upon non-applicants 1 and 2.

2. Facts relevant for disposal of this appeal are, that on 29.09.2013, when Nakshed Yadav was returning from his bicycle from Bhaurabhata to his village Launda, while so, on the way one truck trailer bearing registration no. CG10 C 4565 (henceforth “offending vehicle”) driven by non-applicant 1 rashly and negligently dashed the bicycle of Nakshed Yadav and caused accident. In the said accident, Nakshed Yadav suffered grievous injuries and succumbed to those motor accidental injuries on spot.

3. Appellants/ claimants filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident, deceased was aged about 42 years and earning Rs. 15,000/- per month from selling of milk and claimed total sum of Rs. 23,70,000/- as compensation.

4. Non-applicants 1 and 2 did not appear before the Claims Tribunal even after service of notice.

5. Non-applicant 3/ Insurance Company submitted its reply to the claim application denying the facts pleaded therein, it was further pleaded that non-applicant 2/ owner of the offending vehicle has not got verified the registration certificate, permit, fitness, insurance policy and driving licence. Non-applicant 1 was not possessed with valid and effective driving licence on the date of accident, as such, there was breach of policy conditions and the Insurance Company be exonerated from its liability.

6. Learned Claims Tribunal upon appreciation of pleadings and evidence brought on record by the respective parties has held that late Nakshed Yadav died on account of motor accidental injuries due to rash and negligent driving of offending vehicle by non-applicant 1. Tribunal also recorded finding that on the date of accident, there was breach of policy conditions, driver was not possessed with valid and effective driving licence, exonerated the insurance Company from its liability, awarded total sum of Rs. 4,08,000/- as total compensation and fastened liability to satisfy the amount of compensation upon non-applicants 1 and 2/ driver and owner of the offending vehicle.

7. Mr. Samir Singh, learned counsel for the appellants-claimants submits that in the facts of the case, where the Insurance Company was exonerated from its liability on the ground that the driver of the offending vehicle was not possessed with valid and effective driving licence, a direction ought to have issued to non-applicant 3/ Insurance Company to first deposit the entire amount of compensation and thereafter to recover the same from non-applicant 1 and 2 to protect the interest of claimants who have lost their breadwinner. He submits that the Tribunal awarded meagre amount of compensation overlooking the nature of occupation of the deceased as pleaded in the claim application and stated by witnesses before the Claims Tribunal in their evidence. He submits that the Claims Tribunal assessed the income of deceased as Rs. 3000/- per month on notional basis, Tribunal has not considered the wage structure, cost of living, price index and age of the deceased on the date of accident and assessed monthly income of deceased on lower side. He submits

that the in the facts and circumstances of the case Claims Tribunal ought to have assessed the monthly income of deceased at least Rs. 4500/-. He further contended that the Claims Tribunal has not awarded any amount towards future prospects and the amount of compensation awarded on other conventional heads is also on lower side. In support of his contention learned counsel places reliance upon the judgment of Hon'ble Supreme Court in case of ***National Insurance Company Ltd. v. Pranay Sethi*** reported in ***(2017) 16 SCC 680*** and ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in ***(2018) 18 SCC 130*** in support of his contentions and submits that amount of compensation be suitably enhanced.

8. Mr. Dashrath Gupta, learned counsel for Respondent 3 opposes the submissions made by learned counsel for the appellants and submits that appellants have failed to prove income of deceased by placing cogent and admissible piece of evidence They have not produced any document to prove occupation and income of deceased, hence, Claims Tribunal justified in assessing income of deceased on notional basis. He further submits that the amount of compensation awarded by Claims Tribunal is just and proper which does not call for any interference.

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

10. Sofar as, the submission made by learned counsel for the appellants with respect to assessment of income of deceased is concerned, perusal of the record would show that the claimants in their application filed under Section 166 of the Act of 1988 have

pleaded the income of deceased as Rs. 15,000/- per month from the business of selling milk. In support of their pleadings with respect to income, claimants have examined Kamla Bai, appellant 1 as AW-1, in her statement she stated the income of deceased as Rs. 15,000/- per month, Prabhulal Yadav, father of deceased was examined as AW-2. Except their oral statements, they have not placed any document on record with respect to engagement of deceased in business of selling milk. In absence of any documentary evidence with respect to nature of occupation/ business of deceased, Claims Tribunal justified in assessing income of deceased on notional basis.

11. In absence of any documentary proof with regard to nature of occupation of deceased, the occupation can be assessed as manual labourer only. For assessing income of deceased on notional basis, factors like age of deceased, cost of living, price index, wage structure etc. are to be taken into consideration. Perusal of the award would show that the Tribunal has not considered the aforementioned factors and assessed income of the deceased as Rs. 3000/- per month only which in the opinion of this Court is on lower side. In the present case, date of accident is of 29.09.2013, on which date deceased was aged about 42 years, manual labourer could have earned much more than what is assessed by the Tribunal. Considering entire facts of the case, I find it appropriate to assess income of deceased as Rs. 4500/- per month.

12. The second submission made by learned counsel for the appellants that the Tribunal has not awarded any amount towards

future prospects, is now well settled by Hon'ble Supreme Court. In case of **Pranay Sethi (supra),** Hon'ble Supreme Court has held that where the deceased/ victim was not in permanent employment and in between 40-50 years, there shall be addition of 25% of established income towards future prospects in the income of the deceased, hence, in the present case, there shall be addition of 25% of the established income to the income of deceased for assessing total income on the date of accident for the purpose of calculating amount of compensation. Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** and **Nanu Ram alias Chuhuru Ram (supra)** has considered the award of compensation on other conventional heads. In the case of *Pranay Sethi (supra)* specified the heads on which the amount of compensation to be awarded on other conventional heads ie. loss of consortium, loss of estate, funeral expenses and in the case of *Nanu Ram (supra)* Supreme Court explained the types of consortium to be ie. spousal consortium, parental consortium and filial consortium; appellants-claimants shall be entitled for the amount of compensation on other heads in view of the aforesaid rulings of the Hon'ble Supreme Court.

13. For the foregoing reasons, I find it appropriate to recompute the amount of compensation as under.

14. Income of deceased is assessed as Rs. 4500/- per month ie. Rs. 54000/- per annum, upon adding 25% of the established income, total annual income of the deceased will come to Rs.67,500/-. Deceased was survived by his widow and parents, therefore, there will be deduction of 1/3rd from total annual income of

deceased towards personal and living expenses. After deducting 1/3rd, annual loss of dependency will come to Rs. 45,000/- [Rs.67500-1/3rd of Rs.67500]. Looking to the age of deceased in between 40-45 years, there will be application of multiplier of 14 to annual loss of dependency which makes the total loss of dependency as Rs. 6,30,000/-[Rs.45000x14]. Apart from amount of compensation towards loss of dependency, appellants-claimants shall further be entitled for Rs. 40,000/- towards loss of spousal consortium, Rs. 40,000/- towards loss of filial consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.

15. Now the appellants-claimants are entitled for total sum of **Rs. 7,40,000/-** [Rs.6,30,000 +Rs. 40,000 +Rs.40,000 +Rs.15,000 +Rs.15,000] as compensation instead of Rs. 4,08,000/- as awarded by learned Claims Tribunal. The aforesaid amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization.

16. Sofar as, the submission made by learned counsel for the appellants with regard to the issuance of direction to Respondent 3/ Insurance Company to first deposit the amount of compensation, thereafter to recover the same from owner and driver of the offending vehicle, perusal of the impugned award would show that the Insurance Company has been exonerated from its liability only on the ground that on the date of accident, driver of the offending vehicle was not possessed with valid and effective driving licence, deceased being a third party, hence in view of rulings of Hon'ble Supreme Court in the case of

Shamanna v. Oriental Insurance Co. Ltd. reported in **(2018) 9 SCC 650,** to protect the interest of appellants-claimants, I find it appropriate to direct Respondent 3/ Insurance Company to first deposit the entire amount of compensation along with interest before the Claims Tribunal and thereafter to recover the same from non-applicants 1 and 2 in accordance with law. The amount already deposited against the impugned award passed by the Claims Tribunal and disbursed to the claimants shall be adjusted from total amount of compensation. Other conditions of the impugned award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Pawan