

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 926 of 2015**

1. Preetam Chand Sahu S/o Shri Amaru Ram Sahu, Aged About 43 Years,
 2. Smt. Rajula Sahu W/o Shri Pritamchand Sahu, Aged About 42 Years,
- Both are by Caste Sahu, Residence of Village Nagari, Behind Community Hall, Thana and Tahsil Nagari, Civil and Revenue District Dhamtari, Chhattisgarh.

---- Appellants**Versus**

1. Smt. Leelawati W/o Latye Shri Jayprakash, Aged About 30 Years, R/o Pandaritarai, Raipur, P.S. Pandari, Civil and Revenue District Raipur, Chhattisgarh.
2. Divisional Manager, Megma HDI Future General Insurance Company Limited, Chidambara Complex Near Rajkumar Collage and Dhuppad Petrol Pump, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellants	: Shri Sunil Sahu, Advocate
For Respondent No.1	: None
For Respondent No.2	: Shri Ghanshyam Patel, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge**Judgment on Board****13.09.2021**

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 04.03.2015 passed by Chief Motor Accident Claims Tribunal, Dhamtari, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.183 of 2014 whereby learned Claims Tribunal allowed the application filed under Section 166 of the M.V. Act in part, awarded total sum of

Rs.3,44,000/- as compensation with interest at the rate of 6% interest per annum from the date of filing of claim application till its realization in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, on 25.05.2014, Ishwar Chand Sahu was travelling on a Maruti Car bearing No.CG-04/HC/7504 as occupant along with his friends and going to Jagdalpur from Raipur. While so, when they reached near village Dudhgaon on NH-30, the Car met with an accident with stationary unknown Trailer parked on the road. In the said accident, Ishwar Chand Sahu suffered grievous injuries over his person and succumbed to the injuries.
3. Claimants who are parents of Late Ishwar Chand Sahu filed an application under Section 166 of the M.V. Act seeking total compensation of Rs.25,00,000/- pleading therein that Late Ishwar Chand Sahu was a brilliant student prosecuting Bachelor of Engineering in Civil Engineering, after completion of degree of Engineering, he could have secured good job and have earned handsome salary.
4. Non-applicants No.1 and 2 even after service of notice did not appear before the Claims Tribunal and were proceeded *ex parte*.
5. In the *ex parte* proceedings, claimants have entered into the witness box to prove their pleadings in support of their

pleadings have placed on record the documents of criminal case along with certificate issued by Raipur Institute of Technology, Raipur (Private Engineering College) as well as mark-sheets of deceased.

6. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by the claimants held that Late Ishwar Chand Sahu died on account of motor accidental injuries and awarded a total sum of Rs.3,44,000/- as compensation assessing income of deceased as Rs.3,000/- per month on notional basis and fastened liability to satisfy the amount of compensation upon non-applicants jointly and severally.
7. Shri Sunil Sahu, learned counsel for the appellants/claimants would submit that learned Claims Tribunal erred in assessing income of deceased as Rs.3,000/- per month only on notional basis overlooking the documentary evidence placed on record i.e. mark-sheets of Higher Secondary School, High School and certificate issued by the Principal of Raipur Institute of Technology, Raipur. It is contended that the date of accident was of 25.05.2014 and on the said date, even a manual labourer could have earned more than what Claims Tribunal has assessed. Even if, learned Claims Tribunal has assessed the income of deceased on notional basis treating deceased as a student, then also Claims Tribunal ought to have considered the qualification and past

performance of deceased in Senior Secondary School Certificate Examination as well High School Examination. It is further contended that Claims Tribunal not awarded any amount of compensation towards future prospects and amount of compensation awarded on other conventional heads is also on lower side. He places his reliance on the verdict of Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**.

8. Per contra, Shri Ghanshyam Patel, learned counsel for respondent No.2/Insurance Company would submit that deceased was a student and not an earning member, therefore, learned Claims Tribunal justified in assessing income of the deceased as Rs.3,000/- per month on notional basis. The amount of compensation calculated and 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 perused the record of claim case.
10. So far as submission of learned counsel for the appellants with regard to assessment of income of deceased is concerned, perusal of record would show that claimants in support of their pleadings have filed original mark-sheets of

High School Certificate Examination of the year 2011 and Higher Secondary School Certificate Examination (Class 12th) of deceased Ishwar Chand Sahu. Perusal of mark-sheets available on record as Ex.P/14 and Ex.P/15 would show that deceased was a meritorious student. He secured distinction in all subjects in his Higher Secondary School Certificate Examination. The marks secured by the deceased in his Class 12th Examination itself would show that how intelligent the deceased was and was having his bright future. Claimants have further placed on record the certificate issued by the Raipur Institute of Technology, Raipur, wherein it is certified that deceased Ishwar Chand Sahu was a student of B.E. (Civil Engineering Degree Course) and took admission in July 2013.

11. From the above, it is apparent that deceased has completed one year of his Bachelor of Engineering Course prior to his death. True it is that in absence of any evidence with regard to income of deceased, particularly, when deceased has been shown to be student, but then, income on notional basis is to be assessed considering the past performance of deceased and also taking into consideration his future. As deceased was a student of Engineering College, prosecuting his B.E. (Civil Engineering Degree) on the date of accident and also got distinction in all subjects i.e. Maths, Physics, Chemistry, English and Hindi in his Class 12th Examination,

in the opinion of this Court, learned Claims Tribunal erred in assessing income of deceased as Rs.3,000/- per month only. Taking into consideration the entire facts and circumstances of the case, past performance of deceased and further that on the date of accident, deceased was prosecuting his B.E. (Civil Engineering Degree Course), I find it appropriate to assess the income of deceased as Rs.6,000/- per month on notional basis. It is ordered accordingly.

12. The award of future prospects has been considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and it is held that where the victim/deceased was not in permanent employment and less than 40 years of age, there will be addition of 40% of the established income. In the case at hand, deceased was only 19 years of age, therefore, there shall be addition of 40% of established income to the income as assessed by this Court for calculating total income of deceased on the date of accident. It is ordered accordingly.

13. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the head on which compensation under other conventional heads is to be awarded, such as, loss of consortium, funeral expenses and loss of estate, further quantified the compensation for each head as Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. Types of

'consortium' has been subsequently explained by the Apex Court in case of **Nanu Ram Alias Chuhru Ram** (supra), to be of three types; (i) spousal consortium (payable to the surviving spouse because of the death of the partner); (ii) parental consortium (payable to children because of the death of parents) and (iii) filial consortium (payable to the parents because of the death of children). Hence, appellants will be entitled for the compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

14. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimants requires re-consideration and re-computation, which is as under :

Income of deceased is assessed as Rs.6,000/- per month and Rs.72,000/- per annum. By adding 40% of income towards future prospects, total annual income of deceased will come to Rs.1,00,800/- ($72,000 \times 40\% = 28,800$ and $72,000 + 28,800$). On the date of accident, deceased was unmarried, therefore, there shall be deduction of 50% of his income towards personal and living expenses. Upon deducting 50% towards personal and living expenses, annual loss of dependency will be Rs.50,400/- ($1,00,800 / 2 = 50,400$). Upon applying the multiplier of 18 to annual loss of dependency, total loss of dependency will come to

Rs.9,07,200/- (50,400 x 18). Apart from above amount of compensation towards loss of dependency, claimants are further entitled for a sum of Rs.40,000/- towards loss of filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

15. Now, appellants/claimants are entitled for total compensation of Rs.9,77,200/- (9,07,200 + 40,000 + 15,000 + 15,000) instead of Rs.3,44,000/- as awarded by learned Claims Tribunal. Amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Other conditions of impugned award shall remain intact.
16. In the result, appeal is allowed in part. The impugned award is modified to the extent as indicated herein above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh