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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.213 of 2015

Reserved on 12.01.2021

Pronounced on 18.01.2021

Smt. Nanmati Bhagat, W/o Sundar Sai Bhagat, Cast Uraw, Aged About 40 Years, R/o Gram Rampur, Patrapara, Post Bhedimuda, Tahsil And P.S. Lailunga, District Raigarh, Chhattisgarh (Claimant/Applicant). **---- Appellant**

Versus

1. Shyam Lal Agrawal, S/o Jay Agrawal, Aged About 40 Years, R/o Patthalgoan, Near Central Bank, Ambikapur Road Patthalgoan, Distirict Jashpur, Chhattisgarh (Owner/Non-Applicant No.1).

2. Nandu Uraw, S/o Luthru Uraw, Aged About 45 Years, occupatiion Vehicle Driver, R/o Patthalgoan, Behind Balak High School Patthalgoan, Tahsil And P.S. Pathalgaon, District Jashpur, Chhattisgarh (Driver/Non-Applicant No.2).

3. Branch Manager, Future General India Insurance Company Limited, R/o Near Shop No.03, 2nd Floor, Maruti Business Park, Dhuppad Petrol Pump Ke Pass, Raipur, Chhattisgarh, Pin-492001 (Non-Applicant No.3). **---- Respondents**

For Appellant	:	Shri Manoj Kumar Jaiswal, Advocate.
For Respondent No.3	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal, J

CAV Award/Order

1. This Miscellaneous Appeal has been preferred by the Claimant under Section 173 of the Motor Vehicles Act, 1988 (hereinafter

referred to as 'the Act of 1988') questioning the legality and propriety of the award dated 16.01.2015 passed by the Motor Accident Claims Tribunal, Raigarh (C.G.) in Claim Case No.104/2013, whereby the learned Tribunal while allowing the claim in part has awarded the total amount of compensation to the tune of Rs.2,98,000/- with 6% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on the fateful day, i.e., on 28.07.2013, the deceased Sundar Sai Bhagat was hit vehemently by the offending vehicle *'Truck Tata 709'* bearing Registration No.CG-14-A-0076, near the Village Patrapara, Tehsil Lailunga, District Raigarh (C.G.), when he was returning on foot. The alleged accident occurred owing to rash and negligent driving of its driver namely, Nandu Uraw/Non-Applicant No.2, which was owned by Non-Applicant No.1/Shyam Lal Agrawal and was insured with the Future General India Insurance Company Limited/Non-Applicant No.3. On account of the alleged accident, deceased sustained serious multiple injuries, particularly on his left leg, chest and internal part of his body and was admitted into the hospital at Lailunga where he succumbed to the injuries during the course of his treatment. Report regarding the alleged accident was lodged at Police Station Lailunga against the driver of it under Section 304-A of the Indian Penal Code 1860, in connection with Crime No.177/2013 and the charge-sheet was accordingly submitted before the Judicial Magistrate First Class Gharghoda, District

Raigarh.

3. On account of the aforesaid accident, the Claimant Smt. Nanmati Bhagat being widow of the deceased Sundar Sai Bhagat, instituted a claim petition enumerated under Section 166 of the Act of 1988 by submitting *inter alia* that the deceased, a 40 years old, was a *'Mason (Raj Mistri)'* by profession and used to earn Rs.5,000/- per month, and, thus, total amount of compensation to the tune of Rs.10,50,000/- has been claimed under various heads.

4. The Non-Applicants have contested the aforesaid claim and the Tribunal after considering the evidence led by the Claimant, arrived at a conclusion that the alleged accident occurred on 28.07.2013 due to rash and negligent driving by the driver of the alleged offending vehicle, resulting into the sad demise of claimant's husband Sundar Sai Bhagat, who was 41 years old at the relevant time. It held further that the vehicle in question was not being used in violation of the policy and that by considering the income of the deceased to the tune of Rs.3,000/- per month awarded total amount of compensation along with its interest as mentioned hereinabove, while fastening the liability upon the insurance company.

5. Shri Manoj Kumar Jaiswal, learned counsel appearing for the Appellant/Claimant, submits that the Tribunal while determining the amount of compensation, has committed an illegality in assessing the monthly income of the deceased only to the tune of Rs.3,000/- and thereby erred in awarding a meagre amount of compensation even without considering the future prospects of his income and by

applying the improper multiplier of 12 in contrary to the principles laid down by the Supreme Court in the matter of ***Sarla Verma (Smt) And Others Versus Delhi Transport Corporation And Another*** reported in **(2009) 6 SCC 121.** It is contended further while placing reliance upon the decisions rendered by the Supreme Court in the matters of ***National Insurance Company Limited Versus Pranay Sethi and Others***, and ***Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram and Others*****,** reported in **(2017) 16 SCC 680** and **(2018) 18 SCC 130,** respectively, that a sum of Rs.20,000/- as awarded under the conventional heads is also on lower side.

6. On the other hand, Shri Rohitashva Singh, learned counsel appearing for the Respondent No.3/Non-Applicant No.3 has supported the award impugned as passed by the Tribunal.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. From perusal of the record, it appears that the amount of compensation as determined by the Tribunal while assessing the monthly income of the deceased only to the tune of Rs.3,000/- and by applying the multiplier of 12 even without considering the future prospects of his income is unjustified. It appears further that the amount of compensation as awarded under the conventional heads also appears to be unreasonable and, therefore, the award impugned is liable to be modified accordingly.

9. As, the alleged accident occurred on 28.07.2013, it would,

therefore, be appropriate to consider the deceased's monthly income at Rs.4,943/-, rounded off Rs.5,000/-, yearly Rs.60,000/- as of unskilled worker, prevailing at the relevant point of time, as per the Notification issued by the Prescribed Authority under the Minimum Wages Act, 1948. Since the deceased was 41 years old as evidenced by the Postmortem Report (Ex.P-5), therefore, while determining his actual income, an addition of 25% of it, Rs.15,000/- (Rs.60,000/- x 25%) towards future prospects of his income is to be made in the light of the principles laid down by the Constitutional Bench of the Supreme Court in the matter of ***National Insurance Company Limited Versus Pranay Sethi and Others (supra).*** It would, thus, come to Rs.75,000/- (Rs.60,000/- + Rs.15,000/-) and that by deducting 1/3rd of it, as done by the Tribunal, i.e., Rs.25,000/- towards his personal expenses, the yearly dependency would come to Rs.50,000/- (Rs.75,000/- - Rs.25,000/-). By applying the multiplier of 14, looking to the age of the deceased, the total dependency would arrive at Rs.7,00,000/- (Rs.50,000/- x 14).

10. Besides, the claimant being widow is entitled to be awarded loss of consortium under the head of spousal as held in the matter of ***Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram and Others (supra)*** at the rate as held in the said matter of ***Pranay Sethi (supra).*** Consequently, in addition, the claimant is entitled to the following amounts towards conventional heads, instead of Rs.20,000/- as assessed by the Tribunal, as under:-

S.No.	Modes of Compensation	Amount (In Rs.)
1.	For loss of consortium to wife	40,000/-
2.	For funeral expenses	15,000/-
3.	For loss of estate	15,000/-
	Total	**Rs.70,000/-**

12. Consequently, the Claimant would be entitled to a total amount of compensation to the tune of Rs.7,70,000/- (Rs.7,00,000/- + Rs.70,000/-) with 6% interest per annum from the date of filing of claim petition till the date of actual payment. Out of the said amount, Rs.2,70,000/- shall be given to the Claimant by way of '*Account Payee Cheque'*, while rest, i.e., Rs.5,00,000/- shall be deposited along with interest in her name in any of the Nationalized Banks for the period of 3 years, which shall be disbursed to her after attaining its maturity, as per the direction of the Executing Court.

13. In view of the above, the appeal is allowed to the extent indicated hereinabove with the aforesaid observations. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-
(**Sanjay S. Agrawal**)
Judge

Deepti Jha