NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 560 of 2014

1. Smt. Saroj Mahule, W/o Late Rajesh Mahule Aged About 38 Years
2. Aditya Mahule S/o Late Rajesh Mahule Aged About 5 Years Minor, Thru- Mother Smt. Saroj Mahule

   Both R/o Mig-22, Mahavir Nagar, Colony, Raipur, Tah. Raipur, District : Raipur, Chhattisgarh

---- Appellants/claimants

Versus

1. Chitranjan Singh, S/o Jagannath Singh Aged About 35 Years R/o Lutenga, P.S. Patthalgaon, Distt. Jashpur, Chhattisgarh
2. Manjot Singh Bhatiya S/o Parvindar Singh Bhatiya Aged About 45 Years R/o Janta Transport Telibandha, Raipur, Tah. Raipur, District : Raipur, Chhattisgarh
3. The New India Insu.Co.Ltd. S/o Kachhari Chowk, Madina Manzil, Raipur, Tah. Raipur, District : Raipur, Chhattisgarh

----Respondents

For Appellant/Insurance Company	:	Shri Raghavendra Pradhan, Advocate
For Respondent-3	:	Shri Raj Awasthi, Advocate
For Respondents- 1 and 2	:	None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
04.01.2021

1. Appellants/Claimants preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging the impugned award dated 10.05.2013 passed by 5th Additional Motor Accident Claims Tribunal, Raipur (CG) (for short, 'Claims Tribunal') in Claim Case-85 of 2012, whereby learned Claims Tribunal allowed the application under Section 166 of the Act of 1988 and awarded Rs.55,08,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 23.09.2011, Rajesh Mahule (since deceased) was travelling on Motor Car from Simga to Raipur along with one Ranu Sahu. On the way, when they reached

near Dharsiva, one Truck bearing No. CG 04J-9511 (hereafter, referred to as 'offending vehicle'), driven by NA1 rashly and negligently, dashed the Motor Car of Rajesh and caused accident. In the said accident, Rajesh suffered grievous injuries and succumbed to the injuries on the spot.

3. Appellants/claimants who are widow and child of deceased filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident, deceased was an able bodied person, aged about 41 years. He was working as Assistant Sales Manager with Videocon Industries, earning Rs.6,50,000/- per annum from salary and claimed Rs.75,24,999/- as compensation.

4. NA-1 and 2, driver and owner of offending vehicle did not appear before the Claims Tribunal and were proceeded *ex-parte*.

5. NA3/ Insurance Company submitted its reply denying the pleadings made in claim application. It was further pleaded that deceased met with an accident on account of his own negligence. He while driving his Car rashly negligently and dashed with offending vehicle. Claimants' application is not maintainable on account of non-joinder of necessary parties, owner and insurer of Motor Car have not been impleaded as party Non-Applicants. NA1 was not possessed with valid and effective driving license and there is no valid permit and fitness of offending vehicle, hence, there was breach of Policy Conditions. Insurance Company is not liable to pay any amount of compensation.

6. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by the respective parties, held that NA1 while driving the

offending vehicle rashly and negligently, dashed Motor Car and caused accident, in which deceased died. Contributory negligence, breach of Policy conditions and non-joinder of necessary parties was not found to be proved. Claims Tribunal considering income of deceased as Rs.6,50,000/- per annum from the salary, awarded Rs.55,08,000/- as total compensation and fastened liability upon Non-Applicants therein ie driver, owner and Insurance Company of offending vehicle.

7. Shri Raghavendra Pradhan, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in not considering the salary of deceased as Rs.6,50,000/- per annum for calculating amount of compensation but have reduced the same and calculated the amount of compensation. He further pointed out that learned Claims Tribunal has not added any amount towards future prospects in the income of deceased for the purpose of calculating the amount of compensation. He further contended that Tribunal has awarded very meagre amount on other conventional heads ie Rs.20,000/- only which is contrary to the ruling of Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680 and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others** reported in (2018) 18 SCC 130. He submits that the amount of compensation awarded by learned Claims Tribunal requires suitable enhancement.

8. Shri Raj Awasthi, learned counsel for respondent-3/Insurance company supported the award. While opposing the submissions made by learned counsel for the appellants, he submits that deceased was employed on fixed salary of Rs.6,50,000/- per annum. He further contended that learned Claims Tribunal has

deducted income tax from the total salary and hence, not committed any error for assessing net salary for the purpose of calculating amount of compensation after deducting the Income Tax as per the slab prevailing on the date of accident.

9. We have heard learned counsel for the respective parties.

10. Challenge in this appeal is only to the quantum of amount of compensation awarded by the Tribunal. Liability fastened upon Non-Applicants is not in dispute.

11. To appreciate submissions made by learned counsel for the appellant with regard to assessment of income of the deceased, learned counsel for the appellants has not disputed finding recorded by the Tribunal that deceased was appointed on the post of Assistant Manager on fixed salary of Rs.6,50,000/- per annum. Ex/P8 is the appointment letter issued by the Company showing salary of deceased. Learned Claims Tribunal in Para-22 of the award has considered the yearly emoluments of the deceased as Rs.6,50,000/- per annum and further deducted Income Tax as per slab.

12. Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Indira Srivastava and others** reported in (2008) 2 SCC 763 has considered income of victim for the purpose of calculating amount of compensation, statutory deduction of tax payable must be deducted, and held thus :

> "19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contra-distinguished from the said amount of income, the statutory amount of tax payable thereupon must be deducted."

13. If in light of ruling rendered by Hon'ble Supreme Court finding recorded by learned Claims Tribunal for assessment of income is taken into consideration, we do not find any infirmity or error on the part of Tribunal for ascertaining net income for the purpose of calculating amount of compensation. We affirm the income as assessed by learned Claims Tribunal as Rs.5,88,000/- per annum.

14. The other ground raised by learned counsel for the appellants that learned Claims Tribunal has not added any amount towards future prospects, the issue with regard to addition of amount to the income of victim has been considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and held thus:

> "59.4 xxxx An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

15. In case at hand, on the date of accident, deceased was aged about 41 years, hence there shall be an addition of 25% of the established income towards future prospects. It is ordered accordingly.

16. Learned counsel for the appellants has also raised a ground that the Claims Tribunal has awarded meagre amount of compensation on other conventional heads.

17. Award of amount of compensation on other conventional heads has been determined by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and amount on these heads is also quantified. Hon'ble Supreme Court in case of **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others** reported in (2018) 18 SCC 130 had further explained three types of

loss of consortium ie loss of consortium to the spouse, loss of parental consortium to the children and loss of filial consortium to the parents of deceased.

18. Claimants are entitled for amount of compensation on other conventional heads accordingly.

19. For the foregoing reasons, amount of compensation awarded to the claimants requires re-consideration/re-computation, which is as under:

a) Income of deceased has been assessed as Rs.6,50,000/- per annum. There will be addition of 25% of the established income towards future prospects for ascertaining total income of the deceased for the purpose of calculating amount of compensation.

b) By adding 25% to established income of deceased, his total yearly income comes to Rs.8,12,500/-{650000 + (650000x25/100)}

c) Total yearly income: Rs.8,12,500/-

Non-taxable income Rs.1,80,000/-

Taxable income Rs.6,32,500/-
(812500 – 180000)

10% tax exceeding Rs.1,80,000/-
to Rs.5,00,000/- (320000 x10/100) Rs.32,000/-

20% tax above Rs.5,00,000/- to Rs.8,00,000/- Rs.26,500/-
{(632500-500000) x 20/100}

Total Tax to be deducted **Rs.58,500/-**
(32000 +26500)

d) After deducting income tax from Gross salary, net income of the deceased comes to Rs.7,54,000/- (812500 - 58500)

e) Deceased was survived by widow and child, hence, there will be deduction of 1/3rd towards personal and living expenses. After deducting 1/3rd, yearly loss of dependency comes to Rs.5,02,667/- {754000 -(754000 x 1/3)} (rounded off to rupees).

f) Deceased was aged about 41 years on the date of accident, hence, appropriate multiplier would be 14. After applying multiplier of 14, total loss of dependency comes to Rs.70,37,338/- (502667 x14)

g) Apart from above amount, appellants/claimants are also entitled for Rs.40,000/- towards loss of spousal consortium and Rs.40,000/-towards loss of parental consortium, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses.

h) Now, the appellants are entitled for total sum of **Rs.71,47,338/-** (7037338 + 40000 + 40000 + 15000 + 15000) as compensation.

20. The aforementioned amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal shall remain intact.

21. In view of above, appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-	Sd/-
(PR Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

padma