

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 91 of 2015**

1. Smt.Nainibai Wd/o Late Kanhaiya Lal Vatti Aged About 48 Years
 2. Pameshwari, D/o Late Kanhaiya Lal Vatti Aged About 22 Years
 3. Devesh Kumar S/o Late Kanhaiya Lal Vatti Aged About 20 Years
- All R/o Village Neginala, Tahsil Nagari, Distict Dhamtari, Chhattisgarh

---- Appellants/claimants**Versus**

1. Vishnu Yadav, S/o Devnath Aged About 38 Years R/o Village Mallhari, Tana-Sihawa, Tahsil Nagari, District Dhamatari, Chhattisgarh
2. Sohan Lal Jain S/o Manak Lal Jain Aged About 58 Years R/o Ward No.10 Nagari, Thana And Tahsil Nagari, District : Dhamtari, Chhattisgarh
3. The New India Insu.Co.Ltd., Thru- Its Manager, Circle Office-2, Jeevan Beema Marg, Business Complex, Pandri, District : Raipur, Chhattisgarh

----Respondents

For Appellants	: Shri Palash Agrawal, Advocate
For Respondent-3	: Shri Deepak Gupta, 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.
11.01.2021

1. Appellants/Claimants preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging the impugned award dated 07.10.2014 passed by the Additional Motor Accident Claims Tribunal, Dhamtari (CG) (for short, 'Claims Tribunal') in Claim Case- 45 of 2014, whereby learned Claims Tribunal allowed the application under Section 166 of the Act of 1988 in part and awarded Rs.2,84,000/- as total compensation in a fatal accident case.
2. Facts relevant for disposal of this appeal are that on 31.07.2014 Kanhaiya Lal Vatti (since deceased) was travelling on Motorcycle bearing No.CG 05 5448 and returning to his own house from Nagari. While so, when he reached near Kanwar Rice Mill at about 3.30 pm, one Truck

bearing No.CG 04 ZC 9070 (hereafter, referred to as offending vehicle) driven by NA1 rashly and negligently, dashed Motorcycle of Kanhaiya Lal Vatti. In the said accident, he suffered grievous injuries over his person and died on spot.

3. Claimants, who are widow and children of deceased filed an application under Section 166 of the Act of 1988 pleading therein that on the date of accident deceased was aged about 50 years working as skilled labourer, also running a Kirana Shop and was earning Rs.150-200/- per day. Claimants were dependent upon his income and claimed Rs.10,18,000/- as total compensation.

4. NA1 and 2, Driver and owner of offending vehicle submitted their reply to claim application denying the pleadings made therein. It was further pleaded that the accident was on account of rash and negligent driving of Motorcycle by deceased himself; NA1 was possessed with valid and effective driving license on the date of accident. Offending vehicle was insured with NA3, Insurance Company as such liability to satisfy the amount of compensation would be upon NA3/Insurance Company.

5. Insurance Company submitted its reply denying pleadings made therein. It was further pleaded that offending vehicle was not involved in any accident. Deceased met with the accident on account of his own negligence. On the date of accident, NA1 was not possessed with valid and effective driving license, as such there was breach of policy conditions.

6. Upon appreciation of pleadings and evidence placed on record by the respective parties, learned Claims Tribunal held that deceased died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA1; breach of policy conditions was not found to be

proved; upon assessing income of deceased as Rs.3,000/- per month, awarded Rs.2,84,000/- as compensation.

7. Shri Palash Agrawal, learned counsel for the appellants submits that learned Claims Tribunal erred in assessing income of deceased on lower side. He submits that Tribunal overlooked age of deceased as 50 years and able bodied person, assessed Rs.3,000/- per month as income on the date of accident, which took place on 31.07.2013. He submits that appellants' witness very specifically stated in evidence that income of the deceased was in between Rs.150-200 per day. He further contended that learned Claims Tribunal further erred in applying multiplier of 11 considering age of deceased in age group of 51-55 years. Age of the deceased in post-mortem report only mentioned as 50 years, hence in view of ruling of Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121, appropriate multiplier ought to have been applied for the persons aged in between 46-50 years ie of 13. It is further contended that Claims Tribunal has not awarded any amount towards future prospects as declared by Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in **2017 16 SCC 680**. He further submits that as per dictum of **Pranay Sethi** (supra), Tribunal ought to have added 25% of established income of deceased in his income towards future prospects. Tribunal has awarded only Rs.35,000/- on other conventional heads, which is also on lower side in view of law laid down by Hon'ble Supreme Court in the case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others** reported in (2018) 18 SCC 130. He submits that amount of compensation be suitably enhanced.

8. Shri Deepak Gupta, learned counsel for respondent-3/Insurance Company submits that Tribunal upon taking into consideration that claimants failed to prove income by placing admissible piece of evidence is justified in assessing income of deceased on Notional basis. It is further contended that Tribunal in the facts and circumstances of the case, has awarded just compensation, which does not call for any interference.

9. We have heard learned counsel for the parties and perused record of claim case.

10. Motor accidental death of deceased, insurance policy and liability are not disputed. Challenge in this appeal is only with regard to quantum of amount of compensation awarded by learned Claims Tribunal.

11. So far as first ground raised by learned counsel for the appellants with regard to income of deceased assessed by the claims Tribunal, perusal of pleadings in application filed under Section 166 of the Act of 1988 would show that claimants have very specifically pleaded income of deceased as Rs.150-200/- per day as skilled labourer, and from Kirana Shop. In support of pleadings, appellant-1 Smt Nainibai, widow of deceased examined herself as AW1. In her evidence, she stated income of deceased to be Rs.150-200/- per day. She further admitted that Motorcycle was registered in name of the deceased. In cross-examination, she stated that her husband was working as labourer. Claimants have not placed on record any specific document in this regard. In absence of any clinching and admissible piece of evidence placed on record, to prove income of the deceased, it is to be assessed on the basis of Notional basis. But then, income is to be assessed taking into consideration

nature of occupation, price index, wage structure, cost of living etc on the date of accident.

12. Taking into consideration the entirety of facts and circumstances of the case, we find it appropriate to assess income of deceased as Rs.4,000/- per month.

13. Appellant has been shown to be 50 years of age on the date of accident in pleadings and same has also been stated in evidence by AW1. Post-mortem report placed on record as Ex.A5 also mentions the age of deceased as 50 years. Award of compensation under the head of future prospects is considered by Hon'ble Supreme Court in case of **Pranay Sethi** and held thus:

“59.4 xxx 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.”

14. Deceased was self employed and as per pleadings and statement of witnesses, it has been stated that deceased was aged about 50 years, in view of law laid down by Hon'ble Supreme Court, we find it appropriate to add 10% of established income towards future prospects, which is said to be added for age group between 50-60 years. Award of compensation on other conventional heads is also considered in case of **Pranay Sethi** wherein Hon'ble Supreme Court specified the heads on which compensation on other conventional heads is to be awarded and further amount of compensation on these heads is also quantified. Hon'ble Supreme Court in case of **Magma General Insurance Company** (supra) has further explained the types of consortium ie loss of spousal consortium to husband or wife as the case may be, loss of parental consortium to the children of deceased and loss of filial consortium to the parents

of deceased. Learned Claims Tribunal has awarded amount on other conventional heads, which in the opinion of this Court is on lower side.

15. For the foregoing reasons, amount of compensation to be awarded to the appellants/claimants requires re-computation/reconsideration as under:

- a) Income of the deceased is taken @ Rs.4,000/- per month and Rs.48,000/- (4000 x 12) per annum.
- b) By adding 10% of his established income towards future prospects as per case of **Pranay Sethi** (supra), total yearly income comes to Rs.52,800/- {48000 + (48000 x 10/100)}.
- c) There will be deduction of 1/3rd towards personal and living expenses from yearly income. Now, yearly loss of dependency comes to Rs.35,200/- {52800 — (52800 x 1/3)}.
- d) On the date of accident, deceased was shown to be of 50 years. Therefore, multiplier of 13 will be applicable. Upon multiplying the yearly loss of dependency with 13, total loss of dependency will come to Rs.4,57,600/- (52800 x 13).
- e) Apart from above loss of dependency, claimants are further entitled for Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- for parental consortium, Rs.15,000/- for loss of estate, and Rs.15,000/- for funeral expenses.
- f) Now claimants are entitled for total sum of Rs.5,67,600/- (457600 + 40000 + 40000 + 15000 + 15000).

16. Now appellants/claimants are entitled for a total sum of **Rs.5,67,600/-** instead of Rs.2,84,000/-. Aforementioned amount of compensation shall carry interest @ 6% per annum from the date of claim application, till its realisation. Other conditions imposed by the learned Claims Tribunal shall remain intact.

17. Appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge