

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1061 of 2015

1. Urmila Bai, Wd/o Late Samaru Ram Prajapati Aged About 55 Years
2. Dataram Prajapati S/o Late Samaru Ram Prajapati Aged About 35 Years
3. Manohar Lal S/o Late Samaru Ram Prajapati Aged About 32 Years

All are R/o Village Post- Sendri (Wrongly Mentioned) Thana- Koni,
Revenue/ Civil District- Bilaspur Chhattisgarh ---- **Appellants**

Versus

1. Pankaj Naidu S/o D.S. Naidu Aged About 43 Years (Driver)
2. Ramsevak Sihote S/o Banshilal Sihote (Owner)
Both are R/o Kasturba Nagar, Thana-Civil Line, Revenue/civil District
Bilaspur Chhattisgarh
3. Branch Manager, National Insurance Company Ltd. Branch Office- Taha
Complex, Vyapar Vihar Road, In Front of Pridarshani Nagar, Distt.
Bilaspur Chhattisgarh (Insurance Company) ---- **Respondents/NAs**

For Appellants	: Shri Samir Singh, Advocate
For Respondents- 1 and 2	: None appears
For Respondent-3	: Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

27.08.2021

1) Claimants have preferred this appeal under Section 173 of Motor Vehicle Act, 1988 challenging the impugned award dated 28.02.2015 passed by 4th Additional Motor Accident Claims Tribunal, Bilaspur (For short, 'Claims Tribunal') in Claim Case No.418 of 2014, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded Rs.2,89,500/- as compensation along with interest @ 6% per annum from the date of filing of claim application till its realisation in a fatal accident case.

2) Facts relevant for disposal of this appeal are that on 09.05.2013, Samaru Ram was travelling on Tata Magic vehicle bearing No.CG10 T-2984 (for short, 'offending vehicle') from village Sendri to Bilaspur. On the way, when the vehicle reached near Karva Mandir, it met with an accident and

dashed with side wall on road, due to rash and negligent driving of NA1. In the accident, Samaru Ram suffered grievous injuries and died on the spot.

3) Claimants, who are widow and two major children of deceased filed an application seeking total compensation of Rs.10,25,198/-, pleading therein that deceased retired as Upper Division Clerk from Education Department, earning Rs.9,757/- per month as pension. Apart from earning pension, he was working in agriculture fields along with other labourers and supervising agriculture fields. Looking to wage structure of labourers, his earning was Rs.4,675/- per month.

4) NA 1 and 2 denied entire facts pleaded in claim application and pleaded that appellants are not entitled for any compensation.

5) NA3/Insurance Company also denied entire facts pleaded in claim application. It is further pleaded that there was no valid permit, fitness and insurance of offending vehicle on the date of accident. It was also pleaded that NA1 was not possessed with valid and effective driving license. Offending vehicle was overloaded, as such, there was breach of policy conditions.

6) Learned Claims Tribunal on appreciation of pleading and evidence placed on record by respective parties, held that Samaru Ram died of motor accidental injuries due to rash and negligent driving of offending vehicle by NA1. Breach of policy conditions was not found to be proved, awarded Rs.2,89,500/- as compensation.

7) Shri Samir Singh, learned counsel submits that appellants are raising only two grounds, ie the deduction of 50% towards personal and living

expenses of deceased and meagre amount of compensation awarded on other conventional heads. He submits that Tribunal based on evidence, arrived at a conclusion that deceased was earning Rs.6,175/- per month towards pension but instead of applying deduction of 1/ 3rd, erroneously applied 50% deduction. Amount awarded on other conventional heads is also on lower side. In support of his pleading, learned counsel relied upon judgments of Hon'ble Supreme Court in cases of **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121, **National Insurance Company Vs Pranay Sethi** reported in **2017 16 SCC 680** and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others**, (2018) 18 SCC 130.

8) Shri Dashrath Gupta, learned counsel for respondent-3 Insurance Company would submit that appellant-1 is widow of deceased and appellants-2 and 3 are major sons. To prove the earning from pension of deceased, appellants examined one Nityanand Sinha as AW3 (Additional Treasury Officer, Bilaspur), who admitted that Samaru Ram was getting pension of Rs.6,175/- per month till his death. Urmila Bai, widow of deceased will receive Rs.6,175/- as pension, after death of deceased from 10.06.2013 till 10.05.2019. Thereafter, she will receive pension of Rs.4,219/- per month and Dearness Allowance. He submits that in view of evidence available on record, deduction made by Tribunal of 50% towards personal and living expenses cannot be said to be erroneous. He submits that compensation awarded by Tribunal is just and proper in facts and circumstances of the case, and does not call for any interference.

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

10) So far as submission of learned counsel for the appellant with respect to deduction towards personal and living expenses applied by Tribunal as 50% is concerned, undisputedly, deceased was retired Government Servant. After his retirement, his pension was fixed as Rs.6,175/-. In addition to basic pension, there was addition of Rs.3,582/- towards exgratia pension and total pension was fixed as Rs.9,757/-. Witness examined on behalf of appellants ie AW3 Nityanand Sinha, Assistant Treasury Officer in his evidence has stated that widow of deceased is getting pension of Rs.6,175/- from 10.05.2013 ie immediately after death of deceased and other allowances.

11) Aforementioned facts and circumstances, and evidence available on record would show that widow of deceased was getting pension of Rs.6,175/- till 10.05.2019 and thereafter, she will earn Rs.4,290/- per month and other allowances. In view of above, I am not inclined to interfere with amount of compensation assessed by learned Claims Tribunal towards loss of dependency as Rs.2,59,500/-.

12) So far as the submission with regard to award of compensation on other conventional heads is concerned, Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the heads and quantified the amount for awarding compensation on other conventional heads. The heads on which amount of compensation towards other conventional heads is to be awarded are, loss of consortium, loss of estate and funeral expenses. Hon'ble Supreme Court further explained types of consortium in case of **Nanu Ram** (supra) to be loss

of spousal consortium, loss of parental consortium and loss of filial consortium. Appellants will be entitled for amount of compensation as held by Hon'ble Supreme Court in aforementioned cases.

13) In view of above, amount of compensation to be awarded to appellants requires to be recalculated as under:

- a) Appellants shall be entitled for Rs.2,59,500/- as awarded by learned Claims Tribunal towards loss of dependency.
- b) Appellants will further be entitled for Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses.

14) Now, appellants/claimants will be entitled for **Rs.3,69,500/-** (259500 + 40000 + 40000 + 15000 + 15000) instead of Rs.2,89,500/- as awarded by the Tribunal.

15) Aforementioned amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
JUDGE