NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 602 of 2015

1. Smt. Kavita Bai (Deleted) As Per Honble Court Order Dated 21-06-2021 And 22-07-2021.
2. Minor Pradip Sai S/o Late Maniyar Sai Aged About 9 Years, occupation-student
3. Minor Sandip Sai S/o Late Maniyar Sai Aged About 5 Years, occupation-student
4. Amal Sai S/o Jamal Sai Aged About 60 Years
5. Smt. Pantkunwar W/o Amal Sai Aged About 58 Years

All are R/o Village Karmitikra Police Station And Post Pathalgaon, District Jashpur Chhattisgarh **---- Appellants**

Versus

1. Rajkumar Singh, S/o Shiv Sagar Singh Aged About 32 Years R/o Birgaon Near Binu Petrol Pump C/o Sudhir Rai, Police Station Khamtarai, Raipur Chhattisgarh
2. Sikandar Rai S/o Indradev Rai Aged About 38 Years R/o House No. 512, Kailash Nagar Birgaon, Near Binu Petrol Pump Ravan Bhatha Raipur Chhattisgarh
3. Bharti Axa General Insurance Company Ltd. S/o Through Branch Manager, Bharti Axa General Insurance Company Limited Chawala Complex First Floor, Devendra Nagar, Sai Nagar Road Raipur Chhattisgarh **---- Respondents**

For Appellants	:	Shri Chandradeep Prasad, Advocate on behalf of Shri Amit Singh Chouhan, Advocate
For Respondents- 1 and 2	:	None appears
For Respondent-3	:	Shri Bhavesh Acharya, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

28.09.2021

1. Correctness and sustainability of Award dated 17.11.2019 passed by Motor Accident Claims Tribunal, Raigarh, Chhattisgarh (for short, 'Claims Tribunal') in Claim case- 22 of 2013 is put to challenge in this appeal, whereby learned Claims Tribunal allowed application filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'Act of 1988') in part,,

awarded total sum of Rs.2,98,000/- and fastened liability to satisfy amount of compensation jointly and severally upon non-applicants.

2. Facts of the case in nutshell are that on 03.02.2013 Maniyar Sai, an employee of South Eastern Coal Fields Limited (SECL) was travelling on Motorcycle bearing No.CG 13J-3935 along with his friend by name Tribhuvan Singh and going from village Karmitikra to village Chhal. While so, when they reached near Bayasi Colony, UP Chapra Dhaba at about 19.30 hours, one Truck bearing No.CG04J-9093 (hereafter, referred to as 'offending vehicle') driven by NA1 rashly and negligently, dashed Motorcycle and caused accident. Maniyar Sai died on spot due to motor accidental injuries.

3. Claimants, who are widow, children and parents of late Maniyar Sai filed an application seeking total compensation of Rs.26,75,000/- pleading therein that deceased on the date of accident was an able bodied person, aged about 35 years, working as Mason, also doing agriculture work and thereby earning Rs.12,000/- per month. Claimants were dependant upon income of deceased.

4. NA1, driver of offending vehicle refused to accept notice and was proceeded *ex parte*.

5. NA-2, owner of offending vehicle also did not appear before Claims Tribunal even after service of notice through paper publication and was proceeded *ex parte*.

6. NA3, Insurer of offending vehicle submitted reply to claim application and denied entire facts pleaded therein claim application. It was further pleaded that on the date of accident, NA1 was not possessed with valid and effective driving license, there was no valid registration, permit and fitness of offending vehicle, as such, there was breach of policy conditions. Accident was result of negligence on the part of driver of Motorcycle. Owner and insurer of Motorcycle have not been arrayed as party applicants. Hence, there is non-joinder of necessary parties and application is not maintainable.

7. Learned Claims Tribunal, on appreciation of pleadings and evidence brought on record by respective parties, held that late Maniyar Sai died on account of motor accidental injuries, breach of policy conditions was not found to be proved. Allowed claim application in part, awarded total compensation of Rs.2,98,000/-.

8. Shri Chandradeep Prasad, learned counsel for the appellants would submits that learned Claims Tribunal erred in awarding meagre sum of compensation. He submits that Tribunal overlooking facts and circumstances of the case, age of deceased, date of accident, assessed income of deceased as Rs.3,000/- per month only on notional basis. Appellants in their claim application have pleaded and stated in their evidence that deceased on the date of accident was working as Mason, hence, Tribunal ought to have assessed income of deceased as Rs.5,000/- per month. Tribunal has not awarded any amount of compensation towards future prospects. Application of deduction and multiplier is also erroneous. Claims Tribunal deducted 1/3rd towards personal and living

expenses, overlooking number of dependants/claimants to be 5. Tribunal applied multiplier of 12 only, even after recording age of deceased as 35 years. Amount of compensation awarded on other conventional heads is much on lower side.

9. Shri Bhavesh Acharya, learned counsel for respondent-3/ Insurance Company would submit that appellants/claimants have not brought on record any admissible piece of evidence with respect to occupation and income of deceased. Tribunal in absence of any admissible piece of evidence, justified in assessing income of deceased on notional basis as Rs.3,000/- per month. Amount of compensation calculated and awarded by Tribunal is just and proper, which does not call for any interference.

10. I have heard learned counsel for the parties and also perused the record of claim case.

11. Perusal of record would show that accident was on 03.02.2013. In claim application, occupation of deceased is mentioned as agriculture work and Mason. His income is shown to be Rs.12,000/- per month. Claimants in support of their pleadings in application for grant of compensation, examined claimant-1, wife of deceased as AW-1. In her evidence, she stated that her husband was working as Mason in village and further that in village work of mason is not available always.

12. Tribhuvan Singh, driver of Motorcycle was examined as AW2. Perusal of evidence of aforementioned witnesses would show that they have not brought on record any admissible piece of evidence to prove income of deceased. In absence of any proved income, it is to be

assessed on notional basis. For assessing income on notional basis, factors like age of deceased, his occupation, date of accident, price index, and cost of living are to be taken into consideration. Upon considering aforementioned factors for assessing income of deceased on notional basis, in opinion of this Court, Tribunal erred in assessing income of deceased as Rs.3,000/- per month only, for motor accidental death which took place in February, 2013.

13. Upon considering entire facts and circumstances of the case, age of deceased on the date of accident as 35 years, I find it appropriate to assess income of deceased as Rs.4,500/- per month, treating applicant to be skilled labourer. It is ordered accordingly.

14. 2nd submission made by learned counsel for the appellants of non-awarding of any compensation towards future prospects is concerned, Hon'ble Supreme Court in case of **National Insurance Company Vs Pranay Sethi and others,** reported in (2017) 16 SCC 680, has considered issue with regard of amount of compensation towards future prospects and held that where deceased was less than 40 years of age, and not in permanent employment, there shall be addition of 40% of established income of deceased. In the case at hand, deceased on the date of accident was 35 years only, hence, there shall be addition of 40% of established income for the purpose of computing total income of deceased on the date of accident.

15. Application of deduction towards personal and living expenses has also been considered by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another** reported

in (2009) 6 SCC 121 and laid down guidelines. Hon'ble Supreme Court in aforementioned ruling, has held application of deduction towards personal and living expenses to be based on number of dependants /claimants of deceased. In the case at hand, there are total five claimants, including father of deceased. Even if father of deceased is not to be treated as dependant looking to his age, then also number of dependants would be 4.

16. In view of ruling of Hon'ble Supreme Court in case of **Sarla Verma** (supra), appropriate deduction towards personal and living expenses would be ¼. It is ordered accordingly.

17. Application of multiplier is also considered by Hon'ble Supreme Court, ordered guidelines in case of **Sarla Verma** (supra) and held that application of multiplier to annual income of deceased to be based on age of deceased/victim on the date of accident.

18. On the date of accident, deceased was 35 years of age as reckoned by Tribunal and comes within the age group of 31-35. Hence, in view of ruling of **Sarla Verma** (supra), appropriate multiplier would be 16. It is ordered accordingly.

19. Learned Claims Tribunal has awarded only Rs.10,000/- in total towards compensation on other conventional heads, ie Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium. Hon'ble Supreme Court in case of **Pranay Sethi** has specified heads on which amount of compensation towards other conventional heads is to be awarded and also quantified the amount on these heads. Heads are loss of consortium, loss of estate, and funeral expenses. Amount fixed is

Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. Hon'ble Supreme Court in case of **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others,** (2018) 18 SCC 130, explained the types of consortium, and held consortium to be of three types, ie spousal consortium for spouse, parental consortium for children and fillial consortium to parents of deceased.

20. For the foregoing reasons, I propose to recalculate and recompute the compensation to be awarded as under:

(a) Income of deceased has been taken as Rs.4,500/- per month and Rs.54,000/- per annum.

(b) Upon adding 40% of established income to the annual income of deceased, total annual income would be Rs.75,600/- {54000 + (54000 x 40/100)}.

(c) Upon deducting 1/ 4th of annual income of deceased towards his personal and living expenses, annual loss of dependency comes to Rs.56,700/- {75,600 — (75600 x 1/4)}.

(d) Upon applying multiplier of 16 to the annual loss of dependency, total loss of dependency comes to Rs.9,07,200/- (56700 X 16).

(e) Apart from above, claimants are further entitled for Re.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium to minor children, Rs.40,000/- towards loss of fillial consortium to parents, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

21. This Court is dealing with the appeal challenging amount of compensation calculated and awarded by claims Tribunal on 17.11.2014. Hence, computed amount of compensation keeping in mind entitlement of claimants for compensation on the date of award and amount of

compensation towards loss of spousal consortium, application of deduction is taken into consideration.

22. Now the appellants/claimants are entitled for a total sum of **Rs.10,57,200/-** (907200 + 40000 + 40000 + 40000 + 15000 + 15000) as compensation instead of Rs.2,98,000/-, awarded by learned Claims Tribunal. The amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization.

23. Liability to satisfy amount of compensation would be jointly and severally upon NA1, 2 and 3/respondents-1, 2 and 3. Other conditions of the award shall remain intact.

24. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma