(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1628 of 2015

1. Manoj Yadav, S/o Late Ramkhilawan Yadav, aged about 24 years, Occupation-Student.
2. Smt. Sirja Bai Yadav, W/o Late Ramkhilawan Yadav, aged about 42 years, Occupation- Nothing (Housewife).
3. Pitendra Yadav, S/o Late Ramkhilawan Yadav, aged about 22 years, Occupation-Student.
4. Ku. Santoshi Yadav, D/o Late Ramkhilawan Yadav, aged about 15 years, Occupation-Student (Minor).

   (Appellant No.4 being minor on behalf of through her legal guardian mother Smt. Sirja Bai Yadav, W/o Late Ramkhilawan Yadav)
5. Dukhram Yadav, S/o Late Roopram Yadav, aged about 65 years, Occupation-Agriculture.
6. Smt. Ramphoolbai Yadav, W/o Dukhram Yadav, aged about 60 years, Occupation-Nothing.

   All R/o village Rajanawagaon, Post Office- Rajanawagaon, Police Station Bhoramdev, Tahsil Bodla, District Kabirdham (CG)

---- Appellants (Claimants)

Versus

1. Rupesh Kumar Chandravanshi, S/o Sattelal Chandravanshi, aged about 28 years, R/o Kailash Nagar, Ward No.03, Post Office- Kawardha, Occupation- Agriculture & Contractor, Police Station & Tahsil Kawardha, District Kabirdha (CG)
   (Driver of vehicle Honda Amaz Car bearing registration No.CG09/JA/6413)

1. Ramsharan Chandravanshi, S/o Late Hazarilal Chandravanshi, aged about 55 years, Occupation-Teacher, R/o Urja Park, Saigona, Kawardha, Post Office, Police Station & Tahsil Kawardha, District Kabirdha (CG)
   (Registered owner of vehicle Honda Amaz Car bearing registration No.CG09/JA/6413)
2. The Regional Manager, The Iffco-Tokio General Insurance Company Limited, Address- First Floor, Abhiyan Complex, Chouhan Hotel, Near Dakshin Gangotri, Supela, District Durg (CG) (Insurer of vehicle Honda Amaz Car bearing registration No.CG09/JA/6413)
3. The Iffco-Tokio General Insurance Company Limited, Address- Iffco Sadan, C-1, Centre Saket, New Delhi- 110017.

   (Insurer of vehicle Honda Amaz Car bearing registration No.CG09/JA/6413))

---- Respondents

For Appellants	:	Shri Shivendu Pandya, Advocate
For Respondent No.3 & 4:		Shri Tessy Abraham, Advocate on behalf of Mr. Amrito Das, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order On Board

12/8/2021

1. Claimants/appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988') seeking enhancement in compensation awarded by the learned Motor Accident Claims Tribunal, Kabirdham (Kawardha) vide award dated 9.10.2015 in Claim Case No.15/2015 thereby allowing claim application in part and awarding sum of Rs.1,93,000/- as compensation to claimants in a fatal accident with interest @ 7% p.a., after deducting 50% towards contributory negligence on the part of deceased.

2. Facts of the case, in nutshell, are that on 30.12.2014 Ramkhilawan Yadav was travelling on his motorcycle bearing registration number CG09-J-8863 and going to village Bijajhori. On the way, one car bearing registration number CG09-J-6413 (for short 'offending vehicle'), driven rashly and negligently by non-applicant No.1, dashed motorcycle of Ramkhilawan Yadav from back side as a result he fell down from motorcycle, the offending vehicle ran over him and caused grievous injuries. Ramkhilawan Yadav succumbed to motor accidental injuries on the spot.

3. Claimants-appellants, who are widow, children and parents of deceased Ramkhilawan Yadav respectively, filed an

application under Section 166 of the Act of 1988 claiming total amount of Rs.2,24,00,000/- as compensation pleading therein that deceased was an able bodied person 44 years of age, engaged in the business of supplying building material, running brick klin and thereby earning Rs.15,000/- p.m. Deceased was also having 2.50 acre of agriculture land from which also he was earning Rs.1 Lakh per annum.

4. Non-applicant No.1 filed reply to application denying the facts pleaded therein. It was pleaded that on the date of accident, the offending vehicle was insured with non-applicant No.3; non-applicant No.1 was possessing valid and effective driving license. If any compensation is to be awarded to claimants, the liability to pay the same would be of non-applicant Insurance Company.

5. Non-applicant No.3 & 4-Insurance Company also submitted its reply to claim application and denied the facts pleaded therein for want of knowledge. It was pleaded that there was contributory negligence on the part of deceased as the accident was between two motor vehicles. There was non-joinder of necessary party as owner and insurer of motorcycle have not been impleaded as party to claim application. There was breach of conditions of insurance policy. Hence, the insurance company is not liable to indemnify the insured.

6. The Claims Tribunal upon considering the pleadings and evidence brought on record by respective parties, has held that deceased Ramkhilawan died on account of motor

accidental injuries suffered by him in an accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1-driver; the deceased was contributory negligent to the extent of 50% and there was no breach of any condition of insurance policy. While assessing monthly income of deceased at Rs.3,000/- (Rs. 36,000/- per annum), the Claims Tribunal computed total compensation of Rs.3,86,000/-, out of which 50% was deducted towards contributory negligence on the part of deceased and awarded Rs.1,93,000/- as compensation.

7. Shri Shivendu Pandya, learned counsel for claimants-appellants would submit that finding of the Claims Tribunal holding the deceased to be contributory negligent to the extent of 50% is perverse to the evidence brought on record by claimants/ appellants. In support of his contention, learned counsel has read out statement of Punaram (AW-3) and submitted that he is an eyewitness to the accident, he has clearly stated that before taking turn, deceased had switched on side indicator and also shown his hand. He further submits that the Claims Tribunal erred in assessing income of deceased at Rs.3,000/- per month, ignoring that deceased was building material supplier and not an ordinary labourer. The deceased was maintaining family of six persons out of his earnings. He was also maintaining a motorcycle, which he had purchased on 20.1.2014. These facts go to show that income of deceased was much more than what has been assessed by the Claims Tribunal. The deceased was a PAN card holder,

paying income tax. Copies of registration papers of motorcycle and PAN card are placed on record but the same have not been considered by the Claims Tribunal while assessing income of the deceased for the purpose of computing just compensation. Claimants are widow, children and parents of deceased, who are six in numbers, and in this circumstance, the Claims Tribunal ought to have deducted one-fourth instead of one-third towards personal and living expenses of deceased, as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) & other v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. He further submits that on the date of accident, deceased was 44 years old self employed person, hence the claimants were entitled for addition of 25% of established income of deceased towards future prospects, as held in **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, but the Claims Tribunal has not awarded any amount under this head. He further submits that the Claims Tribunal has awarded Rs.50,000/- only under other conventional heads, which is on lower side and needs to be enhanced in view of decision of Hon'ble Supreme Court in **Pranay Sethi's case (supra)** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130.**

8. Per contra, Mr. Tessy Abraham, learned counsel for respondent No.3 & 4 Insurance Company would submit that finding of the Claims Tribunal that the deceased was

contributory negligent to the extent of 50% is based on proper appreciation of facts and evidence available on record. He further submits that the claimants failed to bring on record any documentary evidence establishing income of deceased as pleaded and stated by them. In absence thereof, the Claims Tribunal is justified in assessing income of deceased on notional basis. He further submits that amount of compensation awarded by the Claims Tribunal in the given facts and circumstances of case is just and proper and it does not call for any interference.

9. I have heard learned counsel for the parties and perused the record of the Claims Tribunal.

10. So far as the submission of learned counsel for claimants/ appellants with respect to assessment of monthly income of deceased is concerned, perusal of claim application would reveal that in claim application the claimants have pleaded occupation of deceased as 'building material supplier' as also running of a brick klin. In the evidence, applicant No.1, son of deceased, has made similar statement. Najru (AW-2), who claimed himself to be friend of deceased, has stated that he has purchased bricks from deceased. In cross-examination, he has admitted that he has not produced any receipt showing purchase of bricks from deceased. Sirjabai, widow of deceased, was examined as AW-4, she also stated about occupation of deceased but admitted that she has not placed any document on record showing earning of deceased as

building material supplier. She also not filed any document to establish that any agriculture land was recorded in the name of deceased. In the light of evidence available on record, it cannot be said that claimants/appellants have been able to prove occupation of deceased as pleaded by them in claim application. The Act of 1988 is a beneficial piece of legislation and in absence of any admissible piece of documentary evidence with respect to income of deceased, it cast a duty upon the Claims Tribunal to assess income on the basis of pleadings and other relevant documents available on record. In case at hand, claimants have placed on record registration papers of motorcycle registered in the name of deceased in the year 2014, which indicates that the deceased was having sufficient income. The deceased was also holder of PAN card, therefore, income of deceased cannot be equated with income of an ordinary labourer. Hence, in the considered opinion of this Court, the Claims Tribunal erred in assessing monthly income of deceased as Rs.3,000/- and the same is hereby set aside. In the given facts and circumstances of the case, this Court is of the view that income of deceased can be taken as Rs.6,000/- per month. It is ordered accordingly.

11. So far as deduction of amount towards personal and living expenses of deceased is concerned, perusal of impugned award would show that the Claims Tribunal has deducted one-third towards personal and living expenses of deceased, which in the opinion of this Court is not correct. In case of Sarla Verma (supra), Hon'ble Supreme Court has held that

where the deceased was married and survived 4 to 6 dependent family members, the deduction towards personal and living expenses of deceased should be one-fourth. In case at hand, the deceased was survived by six dependent family members i.e. widow, mother & father and three children. Hence, as per decision of Sarla Verma's case (supra), there will be deduction of one-fourth towards personal and living expenses of deceased and not one-third as done by the Claims Tribunal. It is ordered accordingly.

12. Perusal of the impugned award would show that the Claims Tribunal has not granted any compensation under the head of 'future prospects'. The Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra) has held that in case the deceased, victim of motor accident, was self-employed and in the age group of 40 to 50 years, an addition of 25% of actual income of deceased towards future prospects should be made. Relevant paragraph of Pranay Sethi's case reads thus;-

> “59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. 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.”

13. In the present case also, the deceased was 44 years old at the time of accident and was not in permanent employment,

but the Claims Tribunal while calculating compensation payable to claimants failed to add any amount to annual income of deceased towards future prospects and thereby committed serious error. Hence, it is held that claimants-appellants are entitled for addition of 25% of the established income of deceased towards future prospects.

14. So far as submission with regard to finding recorded by the Claims Tribunal holding the deceased to be contributory negligent to the accident to the extent of 50% is concerned, perusal of record would show that appellants have placed on record documents of criminal case including copy of FIR as Ex.A-1 in which date & time of accident is mentioned as 30.12.2014 at 8.30 a.m. FIR was registered on the same day at 10.35 a.m. by one Mohan Chandravanshi resident of village Beejajhori, who is engaged in the business of transport. It is mentioned in FIR that deceased was travelling on Kawardha-Podi road, he was coming from Kawardha side and going towards Pondi. On the way, in order to go to his village Bijajhori, he was taking turn, at that time, the offending vehicle came from behind and dashed against motorcycle of deceased. Spot map is also placed on record as Ex.A-4 and a glance of which would show that on Kawardha - Pondi road if a person is travelling from Kawardha-Pondi road, he has to take turn towards his right to go to village Bijajhori. He has to cross the road from his left to right. Claimants have examined Punaram (AW-2) to prove the manner in which accident took place. Perused evidence of AW-2 Punaram. Upon minute

scrutiny of his evidence would show that this witness was not present on spot at the time of accident. Hence his evidence cannot be accepted to be of an eyewitness. Non-applicant No.1 was examined as NAW-1 and he has stated in his evidence that both the vehicles were moving in same direction, motorcycle was ahead of car. He further stated that accident occurred in the middle of road. In the spot map also place of accident is shown at the middle of road. Road on which accident occurred is a highway. In view of nature of evidence available on record and the fact that road being a highway was very wide, this Court is of the considered view that the Claims Tribunal is correct in holding the deceased negligent. The deceased was negligent but upon analysis of entire facts like place and manner of accident, deceased cannot be said to be negligent to the extent of 50%, but only 25%. Accordingly, it is ordered that contributory negligence on the part of the deceased is 25%.

15. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to the claimants/ appellants.

16. As discussed above, income of deceased is taken as Rs.6,000/- per month and since at the time of accident the deceased was 44 years old and was not in permanent employment, therefore, in view of law laid down in case of **Pranay Sethi's case** (supra), the income of deceased is required to be enhanced by 25% towards future prospects,

which comes to Rs.7,500/- (1500+6000). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.90,000/-(7500x12). The deceased was survived by six dependent family members, therefore, out of this amount, one-fourth is to be deducted towards personal & living expenses of deceased, as per decision of Hon'ble Supreme Court in Sarla Verma's case (supra). After deducting one-fourth, annual loss of dependency comes to Rs.67,500/- (90000-22500). By applying multiplier of 14, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency comes to Rs.9,45,000/- (67500x14). Besides this, appellant No.2-widow of deceased is entitled for a sum of Rs.40,000/- for spousal consortium, appellant Nos.1, 3 & 4, two sons & one daughter of deceased, are entitled for a sum of Rs.40,000/- for parental consortium, and appellant No.5 & 6, parents of deceased, are entitled for a sum of Rs.40,000/- for filial consortium, as held by Hon'ble Supreme Court in the matters of **Pranay Sethi (supra)** and **Magma General Insurance (supra)**. In addition to aforesaid amount, appellants are also entitled to get a sum of Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Thus, the total amount of compensation comes to Rs.10,95,000/-.

17. As I have held in preceding paragraph that there was contributory negligence to the extent of 25% on the part of the deceased, respondent Insurance Company is ordered to pay 75% of total calculated amount of compensation i.e.

Rs.8,21,250/- (1095000- 273750) to the claimants-appellants. This amount of compensation shall carry simple interest @ 7% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/ appellants as compensation shall be adjusted from the total amount of compensation as calculated above.

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

Sd/-
(Part Prateem Sahu)
Judge

roshan/-