NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 987 of 2015

- The Oriental Insurance Company Limited, Dhamtari, Branch Manager, The Oriental Insurance Company Limited, Raipur, Divisional Office, Madina Building, Jail Road, Raipur District Raipur (CG)

---- Appellant
(Non-applicant No.3)

Versus

1. Smt. Neera Bai, Wd/o Late Chunuram aged about 32 years.
2. Jageshwar Sahu, S/o Late Chunuram Sahu aged about 12 years
3. Pushkar Sahu S/o Late Chunuram Sahu aged about 10 years.

   No.2 & 3 minor, through natural guardian mother Smt. Neera Bai, Wd/o Late Chunuram.
4. Daulatram Sahu S/o Lt Sukhchand Sahu aged about 55 years
5. Smt. Kamla @ Kamli Bai W/o Daulatram Sahu aged about 52 years

   All are R/o Village Kocharra, Post Devri, Police Station and Tahsil Bagbahra, District Mahasamund (CG) **Claimants**
6. Mohammad Sarfaraj @ Golu, S/o Mohammad Rashid Khan aged about 22 years, R/o Village Lukupali, Komakhan Police Station Komakhan, Tah. Bagbahra, District Mahasamund (CG) **Non-applicant No.1**
7. Lakhan Lal Dewangan, S/o Tejnath Dewangan, aged about 50 years, R/o Chandra Colony, Ward No.38, Rajnandgaon, Police Station and District Rajnandgaon (CG) **Non-applicant No.2**
8. Rashid Khan S/o Gulam Khan, aged about 45 years, R/o Village Lukupali Komakhan, Police Station Komakhan, Tahsil Bagbahra, District Mahasamund (CG) **Non-applicant No. 4**

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate
For Respondents	:	None though served.

Hon'ble Shri Justice Parth Prateem Sahu
Order On Board

6/9/2021

1. Appellant Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988') challenging the award dated 5.5.2015 passed by the learned Motor Accident Claims Tribunal, Mahasamund in Claim Case No.H-83/2014 thereby allowed application filed by claimants under Section 166 of the Act of 1988 in part, awarded total sum of Rs.16,23,080/- as compensation in a fatal accident case along with interest @ 6% p.a. from the date of filing of application.

2. Facts of the case, in nutshell, are that on 11.12.2013 Chunuram along with friends Shrawan Kumar & Bhekram was going to his village from Bagbahra on motorcycle. When they reached near Om Dhaba situated on National Highway No.353, one Santro Car bearing registration number CG08/0431, driven by non-applicant No.1 rashly and negligently, dashed motorcycle from its back and caused accident. In the accident, Chunuram suffered grievous injuries. Shrawan Kumar & Bhekram also suffered injuries. They were taken to the Community Health Centre, Bagbahra for treatment. Looking to grievousness of injuries suffered by Chunuram, he was referred to hospital in Raipur. Chunuram Sahu died on 13.12.2013 during the course of treatment at Medical College Hospital, Raipur.

3. Claimants / respondents No.1 to 5, who are widow, children and parents of deceased Chunuram Sahu respectively, filed an application under Section 166 of the Act of 1988 claiming total amount of Rs.31,50,000/- as compensation pleading therein that deceased was an able bodied person, he was earning Rs.6,000/- per month by selling vegetables in different villages by roaming around.

4. Non-applicants No.1 & 4 filed reply to claim application denying the facts pleaded therein. It was pleaded that on the date of accident, offending vehicle was driven by non-applicant No.1, who was possessing valid and effective driving license. Offending vehicle was insured with non-applicant No.3 Insurance Company and if any amount of compensation is awarded to claimants, then liability to pay the same would be upon non-applicant No.3 Insurance Company.

5. Non-applicant No.2 did not appear before the Claims Tribunal despite service of notice by way of substituted mode i.e. paper publication, hence he was proceeded ex-parte.

6. Non-applicant No.3-Insurance Company also submitted its reply to claim application and denied the facts pleaded therein. It was pleaded that on the date of accident, there was no valid permit; driver of offending vehicle was also not possessed with valid and effective driving license; there was contributory negligence on the part of driver of motorcycle in which deceased was travelling as three persons were travelling in motorcycle against seating capacity of two. Hence, the

insurance company is not liable to indemnify the insured.

7. The Claims Tribunal upon considering pleadings and evidence brought on record by respective parties, has held that deceased Chunuram died on account of motor accidental injuries suffered by him in accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1-driver; there was no element of contributory negligence; there was no breach of any condition of insurance policy. While assessing monthly income of deceased as Rs.6,000/- (Rs. 72,000/- per annum), the Claims Tribunal computed and awarded total compensation of Rs.16,23,080/- under different heads with interest @ 6% p.a. from the date of filing of application. Default interest @ 9% p.a. is also awarded if the amount of compensation is not deposited within a period of one month from the date of award.

8. Mr. Pankaj Agrawal, learned counsel for appellant Insurance Company submits that the Claims Tribunal erred in assessing income of deceased as Rs.6,000/- per month (Rs.72,000/- per annum) without there being any cogent and acceptable piece of evidence establishing occupation and income therefrom of deceased. In absence of any admissible piece of evidence, the Claims Tribunal ought to have assessed income of deceased on notional basis. He contended that Claims Tribunal added 30% of established income of deceased towards future prospects instead of 25%, ignoring that on the date of accident, deceased was 36 years of age and was not

in permanent job. It is further contended that Claims Tribunal awarded excessive amount of compensation under other conventional heads, which is contrary to law laid down by Hon'ble Supreme Court in cases of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130.** In the given facts of case, claimants are entitled for lump sum compensation of only Rs.70,000/- under other conventional heads. He submits that finding recorded by Claims Tribunal that contributory negligence on the part of deceased was not found to be proved is erroneous. He submits that witness examined on behalf of claimants as AW-2 has clearly stated in his statement that apart from deceased, two other persons were also travelling on motorcycle. By travelling three persons on motorcycle as against seating capacity of two persons, the deceased had also contributed to the accident. Thus, there was ample evidence before Claims Tribunal to hold that deceased had also contributed to the accident. He submits that as deceased was in the age group of 36 to 40 years, the Claims Tribunal ought to have applied multiplier, as held by Hon'ble Supreme Court in **Sarla Verma (Smt.) & other v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. He further submits that Claims Tribunal erred in deducting one-fifth amount towards personal and living expenses. As per decision of Sarla Verma's cas (supra), where number of dependent family members of deceased are 4 to 6, there shall be deduction of 'one-fourth' towards personal and living expenses.

9. No one appeared on behalf of respondents though served.

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

11. So far as first submission of learned counsel for appellant Insurance Company 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 'vegetables vendor', who used to sell vegetables by roaming around different places. They have pleaded income of deceased as Rs.200/- per day (Rs.6,000/- per month). In support of pleading with respect to income of deceased, claimants have examined respondent No.1/applicant No.1 as AW-1. Claimant No.1 in her statement has supported the pleadings made in claim application with regard to nature of occupation of deceased. But, except oral statement of claimant No.1-widow of deceased and pleading in this regard in claim application, neither any reliable documentary evidence was produced nor any independent witness was examined by claimants to establish occupation of deceased as vegetable vendor. This being the position, in the considered opinion of this Court, the Claims Tribunal erred in accepting pleading and oral statement of applicant No.1-widow that deceased was engaged in the business of selling vegetables and thereby earning Rs.6,000/- per month. This

finding of Claims Tribunal is not sustainable and it is hereby set aside. In absence of any documentary piece of evidence establishing occupation and income of deceased, as pleaded in claim application, assessment of monthly income of deceased can be done on notional basis keeping in mind some material factors like age and nature of occupation of deceased, cost of living, rate of inflation, wage structure and price index prevailing on the date of accident. In case at hand, accident occurred in the month of December, 2013. Claimants have pleaded that deceased was 36 years of age at the time of accident and was doing work of selling vegetables, which was not proved by admissible evidence. Taking into consideration nature of occupation of deceased pleaded by claimants, price index, cost of wage structure etc. I find it appropriate to reckon income of deceased on notional basis as Rs.5,000/- per month and Rs.60,000/- per annum. It is ordered accordingly.

12. As regards addition of 30% of established income of deceased towards future prospects. The law in this regard is settled by Hon'ble Supreme Court in Pranay Sethi's case (supra) that where the deceased was below 40 years of age and was not in permanent job, the claimants shall be entitled for addition of 40% of established income of deceased towards future prospects. In case at hand, deceased was below 40 years of age, hence the Claims Tribunal ought to have added 40% towards future prospects for calculating total income of deceased. However, the Claims Tribunal has added only 30%

of established income towards future prospects, which in the opinion of this Court is not sustainable and it is hereby set aside. True it is that this appeal is preferred by insurance company assailing quantum of compensation awarded by Claims Tribunal and there is no cross-appeal on behalf of claimants for enhancement of compensation, but looking to ground raised by appellant, amount of compensation requires to be recomputed. Hence, it is ordered that as per decision of Hon'ble Supreme Court in **Pranay Sethi's case (supra)**, claimants shall be entitled for addition of 40% of established income of deceased towards future prospects.

13. 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-fifth towards personal and living expenses, which in the opinion of this Court is not correct. In case of **Sarla Verma (supra)**, Hon'ble Supreme Court has held that where deceased was married and survived 4 to 6 dependent family members, deduction towards personal & living expenses shall be one-fourth. In case at hand, deceased was survived by five dependent family members i.e. widow, two minor children & parents. Hence, as per decision of **Sarla Verma's case (supra)**, there will be deduction of one-fourth towards personal and living expenses and not one-fifth as done by the Claims Tribunal. It is ordered accordingly.

14. So far as application of multiplier '16' by Claims Tribunal for

calculating total amount of compensation is concerned, perusal of record would show that on the date of accident, deceased was 36 years of age. Claimants in claim application have pleaded age of deceased as 35 years, but, in support thereof not produced any documentary proof showing deceased to be 35 years of age. Age of applicant No.1-widow of deceased is shown as 32 years. Hence, in the entirety of facts and circumstances of case as also benevolent object of the Act of 1988 i.e. to award just amount of compensation, I am of the view that age of deceased can be taken as pleaded in claim application as there is no exercise of ascertaining age in the post-mortem. Hence, I am not not inclined to disturb the multiplier applied by Claims Tribunal.

15. As regards award of amount of compensation under other conventional heads. In case of **Pranay Sethi (supra)** Hon'ble Supreme Court has considered issue of award of compensation under other conventional heads and not only specified the heads under which compensation is to be awarded but also quantified amount of compensation. Award of compensation under other conventional heads is further considered by Hon'ble Apex Court in case of **Nanuram alias Churhu Ram (supra)** in which types of consortium is explained i.e. spousal, filial and parental consortium. Perusal of impugned award would show that Claims Tribunal has awarded total sum of Rs.4,25,000/- under other conventional heads i.e. Rs.1,00,000/- each to applicant No.1 to 3 and Rs.50,000/- each to applicant No.4 & 5 for mental agony, loss

of consortium and loss of love & affection; and Rs.25,000/- towards funeral expenses and thereby committed mistake. As per aforementioned ruling of Hon'ble Supreme Court, the claimants, who are widow, minor children and parents of deceased, will be entitled for amount of compensation for spousal consortium, filial consortium and parental consortium as also for loss of estate and funeral expenses. It is ordered accordingly.

16. Coming to next submission of learned counsel for appellant that Claims Tribunal erred in not holding deceased to be contributory negligent for accident. Except pleading that at the time of accident, persons more than seating capacity of motorcycle were travelling on it, no evidence has been brought on record by appellant to establish that there was element of contributory negligence on the part of rider of motorcycle. Furthermore, from the evidence and pleadings it is evident that deceased was not riding motorcycle and he was travelling as a pillion rider. In absence of any cogent and reliable piece of evidence, plea of contributory negligence cannot be said to have been established by appellant. Contributory negligence is a fact required to be proved as held by Hon'ble Supreme Court in case of **Jiju Kuruvilla vs. Kunjujamma Mohan & ors** reported in **(2013) 9 SCC 166**. Accordingly, submission of learned counsel for appellant with regard to contributory negligence is hereby repelled.

17. For the foregoing discussions, this Court proposes to

recalculate amount of compensation payable to claimants/ respondents No.1 to 5 herein.

18. As discussed above, income of deceased is taken as Rs.5,000/- per month and since at the time of accident deceased was 35 years of age 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 40% towards future prospects, which comes to Rs.7,000/- (5000+2000). Annual income of deceased for the purpose of calculating compensation comes to Rs.84,000/-(7000x12). Deceased was survived by 05 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.63,000/- (84000-21000). By applying multiplier of 16, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency comes to Rs.10,08,000/- (63000x16). Besides this, appellant No.1-widow of deceased is entitled for a sum of Rs.40,000/- for spousal consortium, appellant Nos.2 & 3, minor children of deceased, are entitled for a sum of Rs.40,000/- for parental consortium, and appellant No.4 & 5, 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 **Nanuram (supra)**. In addition to aforesaid amount, claimants/respondents No.1 to 5

will also be entitled for Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, total amount of compensation comes to Rs.11,58,000/-. Now claimants/ respondents No.1 to 5 will be entitled for total amount of compensation of Rs.11,58,000/- in place of Rs.16,23,080/-, as awarded by Claims Tribunal. This amount of compensation shall carry simple interest @ 6% p.a. from the date of filing of claim application till its realization.

19. As regards award of penal interest of 9% if the amount of compensation is not deposited/paid within stipulated time, there is no provision in the Act of 1988 for imposing penal interest. As the award of penal interest by Claims Tribunal is contrary to the provisions of the Act of 1988, the same is liable to be and is hereby set aside.

20. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimants/ respondents No.1 to 5 as compensation shall be adjusted from the total amount of compensation as calculated above.

21. 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/-