NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No.431 of 2015

1. Manohar Patel S/o Parmeshwar, Aged About 50 Years, Caste-Patel.
2. Lilawati W/o Manohar Patel, Aged About 45 Years.
   Both are R/o -Jarway, P.S -Baradwar, Tahasil-Sakti, District Janjgir-Champa, (CG).

----Appellants/Claimants

Versus

1. Smt. Shyambai Wd/o Sharad Sahu, Aged About 21 Years.
2. Minor Himanshu Sahu S/o Sharad Sahu, Aged About 3 Years, Through His Mother Smt Shyambai.
3. Dharminbai Wd/o Sahettar Sahu, Aged About 52 Years.
   All are R/o -Tumsha, P.S -Shivrinarayan, Tah- Navagarh, District :Janjgir-Champa, (CG). **----- Non-applicants No.1 to 3.**
4. ICICI Lombard Insurance Company Ltd, Zonal ICICI Bank Tower Bandrakala Complex, Bandra East Mumbai 40005, Territorial Office Raipur, Distt.- Raipur, Chhattisgarh.

--- Non-applicants No.4/Respondents

For Appellants	:	Mr. Ishwar Jaiswal, Advocate.
For Respondent No.1 & 3	:	None.
For Respondent No.4	:	Mr. Tessy Abraham, Advocate on behalf of Mr. Amrito Das, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J
Order on Board

Per Parth Prateem Sahu, J

15/03/2021

1. Appellants/claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of amount of compensation awarded by learned 1st Additional Motor Accident Claims Tribunal, Sakti, Distt -Janjgir-Champa, (CG) (for short, 'Tribunal) vide award dated 28.01.2015 passed in Claim Case No.41/2013, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded total compensation of Rs.3,26,000/- in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 18.03.2011, deceased -Bharat Patel alongwith his mother and father were going towards Janjgir on Motorcycle bearing registration No.CG/12/G/3289, while so when they reached near village Tilai turn, one another motorcycle bearing registration

No.CG11/CA/5517, (for short, 'offending motorcycle**'),** driven by Sharad Kumar Sahu rashly and negligently, came from opposite direction and dashed the motorcycle of Bharat Patel and caused accident. In the said accident, Bharat Patel suffered grievous injuries and succumbed to those injuries on spot.

3. Appellants/claimants, who are parents of deceased, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.65,35,000/- pleadings therein that on the date of accident, deceased was pursuing Bachelor of Computer Application at C.V. Raman University as well as doing work as agriculturist thereby earing Rs.10,000/- per month.

4. Non-applicant Nos.1 to 3, who are widow, child and mother of late Sharad Sahu, driver/owner of offending motorcycle, submitted reply to claim application, while denying pleadings made therein denied the fact of accident. They pleaded that on the date of accident, Sharad Kumar Sahu was driving offending motorcycle on his own side. At that relevant time deceased Bharat Patel drove his motorcycle in rash and negligent manner and caused accident to the offending motorcycle. Owner and insurer of motorcycle on which deceased was travelling has not been arrayed as party non-applicants to claim application, as such there was non-joinder of necessary party. On the date of accident, offending motorcycle was insured with Non-applicant No.4-Insurance Company, hence claim against non-applicant No.1 to 3 may be dismissed.

5. Non-applicant No.4/Insurance Company submitted its reply to application pleading therein stated that facts pleaded in claim application are false and fabricated. There was breach of condition of insurance policy as on the date of accident driver of offending motorcycle was not possessed with valid and effective driving license.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Bharat Patel died on account of rash ad negligent driving of offending motorcycle by Sharad Kumar Sahu. Negligence on the part of deceased Bharat Patel and breach of policy condition of insurance policy issued in favour of offending motorcycle were not found to be proved. Tribunal allowed application in part, awarded total compensation of Rs.3,26,000/- along with interest @ 6% p.a and fastened liability upon Non-applicants, jointly and severally, to satisfy the amount of compensation.

7. Learned counsel for appellants/claimants submits that Tribunal erred in assessing income of deceased as Rs.3,000/- per month, overlooking the evidence and documents brought on record by claimants. On the date of accident, wages of labourer would be much more than what has been assessed by Tribunal. No amount towards future prospects has been awarded and amount of compensation awarded under other conventional heads are also on lower side. He submits that just amount of compensation upon proper assessment of income of deceased be awarded.

8. Learned counsel for respondent No.4/Insurance Company submits that claimants/appellants failed to prove income of deceased by producing cogent and reliable piece of evidence, hence, Tribunal is perfectly justified in assessing income of deceased on notional basis. Awarded just amount of compensation, which does not call for any interference.

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

10. So far as submission with regard to income of deceased as Rs.3,000/- per month is concerned, claimants in support of their pleadings placed on record Ex.P-7 & Ex.P-8 ie BCA 2nd Semester marks sheet and higher secondary

school certificate of deceased. Perusal of above evidence would show that deceased was not an ordinary boy or engaged only as Labourer but he was pursuing his studies of BCA at C.V. Raman University and he could be in a position to have a satisfactory income. As there is no specific evidence with regard to income of deceased, income is to be assessed on notional basis. At the same time it is to be kept in mind the date of accident, education of deceased, nature of occupation, wage structure, price index and cost of living. The accident is of 18.03.2011, on the said date income of manual labourer would be much more than what is assessed by Tribunal, hence, in the aforementioned facts of the case, we find it appropriate to assess income of deceased as Rs.4,500/- per month.

11. Coming to next submission with regard to non-awarding of any amount towards future prospects and awarding very meager amount of compensation under other conventional heads.

12. Issue with regard to award of future prospects has been considered by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[1] and held that in case deceased, victim of motor accident, was not in permanent employment and below the age of 40 years, an addition of 40% of established income of deceased towards future prospects should be made. Relevant paragraph reads as under :-

> "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."

[1] (2017) 16 SCC 680

13. In case at hand, Tribunal based on the post -mortem report available on record has assessed age of deceased as 28 years on the date of accident. Therefore, this Court is of the considered opinion that claimants are entitled for an addition of 40% of established income of deceased towards future prospects.

14. Tribunal has awarded only Rs.5,000/- towards funeral expenses, Rs.10,000/- towards love & affection and Rs.5,000/- towards loss of estate, which in the opinion of this Court is on lower side and the same is required to be enhanced in view of the decisions of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors**[2], which should be Rs.40,000/- towards loss of filial consortium, Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate.

15. For the foregoing reasons, we propose to recompute the amount of compensation awarded by Tribunal.

16. Income of deceased is taken as Rs.4,500/- per month and Rs.54,000/- per annum (4,500X12). Upon adding 40% of the establish income towards future prospects, total yearly income comes to Rs.75,600/- (Rs.54,000/- + 40% of Rs.54,000/-). As on the date of accident, deceased was bachelor, 50% amount is to be deducted towards his personal and living expenses. After deducting 50%, annual loss of dependency comes to Rs.37,800/- (75600 – ½). Age of deceased assessed by Tribunal is 28 years, therefore, appropriate multiplier would be '17'. By applying multiplier of 17, total loss of dependency comes to Rs.6,42,600/- (37800 X17). Apart from this, appellants are also entitled for a sum of Rs.40,000/- towards loss of filial consortium, Rs,15,000/- towards funeral expenses & Rs.15,000/- towards loss of estate.

[2] (2018) 18 SCC 130

17. Now appellants/claimants are entitled for a total compensation of **Rs.7,12,600/-** (Rs.6,42,600/- + Rs.40,000/- + Rs,15,000/- + Rs.15,000/-) instead **of Rs.3,26,000/-** as awarded by Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of application till its realization. Rest of the conditions of impugned award shall remain intact.

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

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-