NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1076 of 2015

1. Smt. Manisha Dwivedi, W/o Late Shri Rajkumar Dwivedi, aged about 30 years,
2. Ku. Rishika Dwivedi, D/o Late Shri Rajkumar Dwivedi, aged about 05 years (Minor),
3. Ku. Komal Dwivedi, D/o Late Shri Rajkumar Dwivedi, aged about 04 years (Minor),
4. Raj Dwivedi, S/o Late Shri Rajkumar Dwivedi, aged about 04 months (Minor),
5. Ramsujan Dwivedi, S/o Late Shriram Gopal Dwivedi, aged about 61 years,
   [Appellant No.2 to 4 being minor on behalf of through their legal guardian mother Smt. Manisha Dwivedi, W/o Late Shri Rajkumar Dwivedi]
   All R/o Avanti Vihar, Police Station Telibandha, Raipur, Tahsil- District Raipur, Chhattisgarh.

---- Appellants

Versus

1. Vikash Sharma, S/o Heeramani Sharma, aged about 27 years, R/o Kaindiguda Ward No.31, Post Office & Police Station Raigarh, Jut Mill Chowki, Raigarh, District Raigarh, Chhattisgarh.
2. Hemant Lal Bharti, S/o Shri Makhanlal Bharti, R/o H.No.99, Ward No.31, Kaindiguda, Post Office & Police Station Raigarh, District Raigarh, Chhattisgarh.
3. The New India Insurance Company Limited through Divisional Office, Divisional Manager, Kutchery Chowk, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellants : Shri A.L. Singroul, Advocate
For Respondents 1 & 2 : None
For Respondent No. 3 : Shri Anil Gulati, Advocate

(Proceedings through Video Conferencing)

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

13.08.2021

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 15.05.2015 passed by the Chief Motor Accident Claims Tribunal, Raipur,

Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.72 of 2013 whereby learned Claims Tribunal allowed an application filed under Section 166 of the M.V. Act in part and awarded Rs.22,80,000/- as total compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization in a fatal accident case and fastened the liability to satisfy the amount of compensation upon non-applicants jointly and severally.

2. Brief facts relevant for disposal of this appeal, are that, on 20.05.2013, Rajkumar Dwivedi was travelling in a Car bearing No.CG-13/U/6027 (hereinafter referred to as 'offending vehicle') as occupant driven by non-applicant No.1. On the way, non-applicant drove his vehicle rashly and negligently, due to which, offending vehicle turned turtle. In the accident, Rajkumar Dwivedi suffered grievous injuries over his person and succumbed to those injuries.

3. Appellants/claimants, who are widow, children and father of Late Rajkumar Dwivedi filed an application under Section 166 of M.V. Act seeking compensation of Rs.26,00,000/- pleading therein that on the date of accident, deceased was able-bodied person, aged about 32 years, working as Marketing Manager in Metas Security and Fire Services Private Limited and was earning Rs.15,000/- per month.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application, denying the facts pleaded therein. It was further pleaded that accident was not a result of rash and negligent driving of offending vehicle by non-applicant No.1, offending vehicle was insured with non-applicant No.3, as such, liability, if any, to satisfy the compensation would be upon non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted reply, resisting the claim, it was further pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective licence, as such, there was breach of policy conditions, hence, Insurance Company be exonerated from its liability.

6. On appreciation of pleadings, evidence and material brought on record by the respective parties, Tribunal held that Rajkumar Dwivedi died on account of motor accidental injures due to rash and negligent driving of offending vehicle by non-applicant No.1, absence of valid and effective driving licence with non-applicant No.1 and breach of policy conditions were not found to be proved, while assessing the income of deceased as Rs.15,000/- per month, awarded Rs.22,80,000/- as total compensation.

7. Shri A.L. Singroul, learned counsel for the appellants/claimants would submit that learned Claims

Tribunal erred in awarding meagre amount of compensation. He submits that no amount of compensation is awarded towards future prospects overlooking the age of deceased as 32 years on the date of accident. Award of compensation on other conventional heads to be on lower side as well as interest at the rate of 6% per annum also to be on lower side. It is contended that amount of compensation be suitably enhanced. In support of his contention, he places reliance on the ruling of Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680**, **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130** and **United India Insurance Company Limited v. Satinder Kaur @ Satwinder Kaur and Others** reported in **AIR 2020 SC 3076**.

8. Per contra, Shri Anil Gulati, learned counsel for respondent No.3/Insurance Company while supporting the award passed by Tribunal, would submit that learned Claims Tribunal accepted the income as pleaded by claimants and awarded just amount of compensation, which does not call for any interference.

9. I have heard learned counsel appearing for the respective parties and perused the record carefully.

10. This appeal is only with respect to enhancement of quantum of compensation. The ground raised for enhancement of amount of compensation is non-award of compensation towards future prospects, award of meagre amount of compensation on other conventional heads and rate of interest awarded to be on lower side.

11. So far as the award of compensation towards future prospects is concerned, Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** and **Pranay Sethi** (supra) considered the award of future prospects to the victim/deceased. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that if victim/deceased is below 40 years of age and not in permanent employment, then there shall be addition of 40% of established income towards future prospects. In the case at hand, deceased was working as Marketing Manager in Private Sector, hence, in the opinion of this Court, there shall be an addition of 40% of established income towards future prospects for computing total income of deceased on the date of accident. It is ordered accordingly.

12. So far as the award of compensation on other conventional heads is concerned, perusal of award would show that learned Claims Tribunal has awarded Rs.1,00,000/- towards loss of consortium as well as pain and suffering to

appellants/claimants and Rs.20,000/- towards funeral expenses. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the head on which compensation under other conventional heads to be awarded, such as, loss of consortium, funeral expenses and loss of estate, further quantified the compensation for each head as Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. Types of 'consortium' has been subsequently explained by the Apex Court in **Nanu Ram Alias Chuhru Ram** (supra), to be of three types; (i) spousal consortium (payable to the surviving spouse because of the death of the partner), (ii) parental consortium (payable to children because of the death of parents); (iii) and filial consortium (payable to the parents because of the death of children). Hence, appellant will be entitled for the compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

13. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimants requires re-consideration and re-computation, which is as under :

Income of deceased as pleaded and assessed by learned Claims Tribunal is Rs.15,000/- per month i.e. Rs.1,80,000/- per annum. By adding 40% of income towards future prospects, total annual income of deceased will come to Rs.2,52,000/- (1,80,000 x 40% = 72,000 and 1,80,000 + 72,000). From the total income, income tax is to be deducted as held by Hon'ble Supreme Court in case of **National Insurance Company Vs. Indira Shrivastava** reported in **(2008) 2 SCC 763** as per rate of income tax prevailing on the date of accident, i.e. 2013-14. In the financial year 2013-14, income upto Rs.2,00,000/- was exempted from tax, hence, taxable income of deceased will come to Rs.52,000/- (2,52,000 – 2,00,000). On income exceeding Rs.2,00,000/- upto Rs.5,00,000/-, income tax at the rate of 10% is to be charged. Taxable income of deceased is taken as Rs.52,000/-, tax at the rate of 10% on it, is Rs.5,200/-. After deduction of income tax of Rs.5,200/- from total annual income, net income of deceased will be Rs.2,46,800/- (2,52,000 – 5,200). Deceased was survived by five dependents, therefore, there shall be deduction of 1/4th towards his personal and living expenses. After deducting 1/4th towards personal and living expenses, annual loss of dependency will be Rs.1,85,100/- (2,46,800 / 4 = 61,700 and 2,46,800 – 61,700). After applying the multiplier of 16 to annual loss of dependency, total loss of dependency will come to Rs.29,61,600/- (1,85,100 x 16).

Apart from above amount of compensation towards loss of dependency, claimants are further entitled for a sum of Rs.40,000/- towards spousal consortium, Rs.40,000/-

towards parental consortium, Rs.40,000/- towards filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

14. Now, appellants/claimants are entitled for total compensation of Rs.31,11,600/- (29,61,600 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.22,80,000/- as awarded by learned Claims Tribunal.

15. So far as the submission made by learned counsel for the appellants/claimants with regard to award of interest is concerned, Section 171 of the M.V. Act provides for award of interest where any claim is allowed, which reads as under :

> "**171. Award of interest where any claim is allowed.**—Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

16. The award of interest has been left to the discretion of Claims Tribunal. In the case at hand, learned Claims Tribunal has awarded interest at the rate of 6% per annum, which in the facts and circumstances of the case cannot be said to be erroneous, hence, I am not inclined to interfere with the award of interest by Tribunal. Amount of compensation awarded to the appellants/claimants shall

carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Other conditions imposed by the learned Claims Tribunal shall remain intact.

17. In the result, appeal is allowed in part. The impugned award is modified to the extent as indicated herein above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh