

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1371 of 2015

1. Sharma Devi W/o Late Rampratap Patel, Aged About 30 Years, R/o Village- Sonadiha, Tahsil- Pratappur, District- Surajpur, Chhattisgarh.
 2. Goutam Patel S/o Late Rampratap Patel, Aged About 22 Years.
 3. Uttam Patel S/o Late Rampratap Patel, Aged About 20 Years.
- Appellant No.2 & 3 are R/o Village- Pansara, Tahsil- Wadrafnagar, District- Balrampur, Chhattisgarh.

---- Appellants

Versus

1. United India Insurance Company Limited, Branch Office, Ambikapur, Bramharoad, Near Ram Mandir, Ambikapur, District Surguja, Chhattisgarh.
2. Rajesh Kumar Gupta S/o Ramakant Gupta, R/o Village- Ring Road, Namnakala, Near Women Hostel, Post- Ambikapur, District- Surguja, Chhattisgarh. **(Owner).**
3. Uday Kumar Kushwaha S/o Nandu Dev Kushwaha, R/o Village- Revti, Tahsil- Pratappur, District- Surajpur, Chhattisgarh. **(Driver).**

--- Non-applicant Nos.1 to 3/Respondents

For Appellants	: Mr. D.N. Prajaptai, Advocate.
For Respondent Nos.1	: Mr. Pankaj Agrawal, Advocate.
For Respondent No.2 & 3	: None.

Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

09/09/2021

1. Claimants-appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by learned Additional Motor Accident Claims Tribunal, Pratappur, District -Surajpur, (CG) (for short 'Tribunal') vide award dated 30.09.2015 in Claim Case No.21/2015, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.5,05,400/- in a fatal accident case.
2. Facts relevant for disposal of this appeal are that on 20.10.2014, Ram Prataph Patel was returning to his village Sonadiha from Pratappur on Bus bearing registration No.CG-15-ZA-0308, (for short, 'offending vehicle'). On the way near Pendari turn, offending vehicle turned turtle due

to rash and negligent driving of non-applicant No.3 and fell in a ditch. In the aforementioned accident, Ram Prataph Patel suffered grievous injuries. He was taken to Hospital where during the course of treatment, succumbed to injuries.

3. Appellants, who are widow and son of deceased, filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.25,85,000/- pleadings therein that on the date of accident, deceased was abled bodied person and working as 'truck driver'. Earlier deceased was driving truck of one Jai Prakash Patel and earning Rs.18,000/- per month. His driving license was expired on 30.03.2014, hence, he applied for its renewal but due to some technical reasons, it took some time. During this intervening period, he has stopped driving truck and started other work. Claimants were dependent upon income of deceased.
4. Non-applicants No.1/Insurance Company of offending vehicle, submitted reply denying the facts pleaded therein. It was further pleaded that amount of compensation claimed is highly exaggerated. Information of accident was not forwarded to Insurance Company. On the date of accident, Non-applicant No.3 was not possessed with valid and effective driving license. There was breach of policy conditions as passengers more than seating capacity were traveling at the time of accident.
5. Non-applicant No.2/owner of offending vehicle, submitted reply to claim application and resisted the claim. It was further pleaded that on the date of accident, offending vehicle was having valid permit and fitness certificate. Non-applicant No.3 was possessed with valid and effective driving license and offending vehicle was insured with non-applicant No.1- Insurance Company, hence, liability, if any, to pay amount of compensation would be of Insurance Company.

6. Non-applicant No.3/driver of offending vehicle did not filed reply.
7. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Ram Prataph Patel died on account of motor-accidental injuries suffered by him due to rash and negligent driving of offending vehicle by Non-applicant No.3. Breach of policy condition was not found to be proved. Upon assessing income of deceased as Rs.4,500/- per month, calculated Rs.Rs.4,70,400/- towards loss of dependency and awarded total compensation of Rs.5,05,400/- alongwith interest at the rate of 6% p.a., fastened liability upon non-applicants, jointly & severally, to satisfy the amount of compensation. Further held that applicant No.1 wife of deceased is not entitled for any amount of compensation as she was not legally wedded wife of deceased.
8. Learned counsel for appellants would submit that Tribunal erred in not awarding any amount of compensation to appellant No.1-wife of deceased, who at the time of accident, was residing alongwith children and mother of deceased. Mother and children of deceased filed joint application alongwith appellant No.1, hence, status of appellant No.1 being wife was accepted by them. As appellant No.1 was residing with deceased as wife and was dependent upon his earning, she is also entitled for compensation. Though Tribunal has considered the pleadings and evidence brought on record by claimants with regard to occupation of deceased as 'driver of truck/heavy goods vehicle' but has not accepted income pleaded in application and stated in their evidence only on the ground that at the time of accident license of deceased was expired. Tribunal has not awarded any compensation towards future prospects, amount awarded under other conventional heads is also on lower side. Hence, amount of compensation be suitably enhanced.

9. Learned counsel for respondent/Insurance Company submits that Tribunal considering pleadings and evidence brought on record by respective parties awarded just and proper amount of compensation, which does not call for any interference.
10. Heard learned counsel for the parties and perused record of claim case.
11. So far as submission made by learned counsel for the appellant with regard to enhancement of amount of compensation is concerned, perusal of records would show that claimants in their claim application has pleaded occupation of deceased as truck driver and earning therefrom Rs.18,000/- per month. Similar statement is made by appellant No.1 -wife of deceased examined as AW/1. One Arun Kumar Patel, resident of village of deceased, was examined as AW/2, he also stated that he is aware about occupation of deceased to be driver because there was regular meeting with deceased being resident of same village. Claimants placed on record driving licence issued in name of deceased as Ex.P-14 which was for 'Light Motor Vehicle' and 'Heavy Goods Vehicle', valid up to 03.03.14. Claimants further placed on record extract of license particulars issued by Regional Transport Office, Surguja as Ex.P-15, in which it is mentioned that first term of licence was from 15.07.93 to 04.03.2000. License was renewed on 15.09.2000 for a period of 3 years ie till 14.09.2003, it was again renewed on 22.12.2003 upto 21.12.2006. Thereafter, it was renewed on 31.06.2011 upto 30.03.2014. Renewal of license since 15.09.2000 for a period of 3 years ie till 14.09.2003 reflects that license possessed by deceased for 'transport vehicle' or 'heavy goods vehicle' as mentioned in license. Age of deceased is shown as 45 years.
12. The evidence brought on record by claimants shows that deceased was earning his livelihood by working as driver. It is also evident from

statement of AW/1 that deceased had been working in his house during the period when renewal of licence was pending before Competent Authority. Deceased being law abiding citizen stopped driving of truck as soon as his license expired, but it does not mean that deceased never worked as driver of heavy goods vehicle for earning his livelihood.

13. The aforementioned evidence shows that main occupation of deceased was driving truck/heavy goods vehicle, hence, income is to be assessed considering his occupation to be driver of heavy goods vehicle.

14. Accident took place in the year 2014, hence, I find it appropriate to reckon income of deceased as Rs.7,500/- per month. Deceased was aged about 45 years, as pleaded in claim application, but his age is shown as 42 years in postmortem report. Date of birth of deceased in license particular is mentioned as 01.06.1970. On the date of accident, age of the deceased was less than 45 years, hence, appropriate multiplier in the facts of the case would be '14'.

15. Issue with regard to award of future prospects has been considered by the Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi¹** and it was held that in case where deceased/victim of motor accident, was between the age group 40-50 years and not in a permanent employment, an addition of 25% of established income 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

1 (2017) 16 SCC 680

method of computation. The established income means the income minus the tax component.”

16. Indisputably, in case at hand, on the date of accident, deceased was in between the age of 40 to 50 years and not in permanent employment, therefore, there shall be an addition of 25% of established income towards future prospects to income of deceased for assessing total income for the purpose of calculating compensation.
17. Hon'ble Supreme Court in case of **Pranay Sethi (supra)** held that claimants, who lost their bread winner/family members are entitled for Rs.40,000/- towards loss of consortium, Rs.15,000/- each towards loss of estate and funeral expenses. Further, in case of **Magma General Insurance Company (Supra)** has explained different types of consortium like spousal, parental and filial consortium.
18. Claimants will be entitled for amount of compensation under other conventional heads in view of judgments passed by the Hon'ble Supreme Court in cases of **Pranay Sethi (supra)** and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram²**.
19. For the foregoing reasons, I propose to recompute the amount of compensation.
20. Income of deceased is taken as Rs.7,500/- per month. By adding 25% of establish income towards future prospects, total monthly income of deceased comes to Rs.9,375/- (Rs.7,500 + 10% of Rs.7,500/-) accordingly yearly income comes to Rs.1,12,500/- (12 X Rs.9,375/-). After deducting 1/3rd towards personal and living expenses annual loss of dependency comes to Rs.75,000/- (Rs.1,12,500 – 1/3 of Rs.1,12,500/-). By applying multiplier of 14, total loss of dependency comes to

Rs.10,50,000/- (Rs.75,000/- X 14). Besides compensation towards loss of dependency, claimants are also entitled for a sum of Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.15,000/- towards funeral expenses & Rs.15,000/- towards loss of estate.

21. Now, claimants will be entitled for a total compensation of **Rs.11,60,000/-** (Rs.10,50,000/- + Rs.40,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-) instead of **Rs.5,05,400/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization.
22. So far as submission with regard to non-award of compensation to appellant No.1-wife of deceased is concerned, appellant No.1 has jointly filed application for grant of compensation along-with mother and children of deceased. In cases of grant of compensation under the Act of 1988 it is to be seen whether claimants were dependant upon income of deceased or not. Hence, finding recorded by Tribunal that appellant No.1, was legally wedded wife, is not entitled for grant of any compensation is not sustainable and it is hereby set aside.
23. Now, appellant No.1 to 3 are entitled for amount of compensation in equal ratio. Rest of the conditions of impugned award shall remain intact.
24. In result appeal is allowed in part and the impugned award stands modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-