NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 252 of 2016

1. Smt. Neelbati Wd/o Late Balsingh, Aged About 25 Years
2. Master Bhola S/o Late Balsingh, Aged About 5 Years Minor
3. Master Narayan S/o Late Balsingh, Aged About 1 Year 6 Month

   appellants 2 and 3 are Minors Through Legal Guardian Smt. Neelbati Mother R/o Village Uparpara Munjala P.S. Bhanpuri District Bastar, Chhattisgarh ....Claimants

---- Appellants

Versus

1. Deepak Vishwas S/o Haridas Vishwas, Aged About 47 Years R/o Malkangiri Odisha Present Address Panarapara Jagdalpur District Bastar, Chhattisgarh ....Driver
2. Rahul Pandey S/o Ramshankar Pandey, Aged About 27 Years R/o Parpaa Naka Jagdalpur District Bastar, Chhattisgarh ....Owner Of The Vehicle
3. The Branch Manager, The Oriental Insurance Co. Ltd. Laxman Avenue Medical College Road Jagdalpur District Bastar, Chhattisgarh ....Insurer

---- Respondents/Non-Applicants

For Appellants	:	Shri Praveen Durandhar, Advocate
For Respondents- 1, 2 and 3	:	None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

15.09.2021

1) Challenge in this appeal is to the award dated 30.11.2015 passed by the 2nd Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur (For short, 'Claims Tribunal') in Claim Case No.94 of 2015, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.4,53,000/- with interest in a fatal accident case.

2) Facts relevant for disposal of this appeal are that on 06.02.2015, Balsingh and his friend Hiraram Yadav were returning to their home on

their own bicycles. When they reached near village Mujla Main Road, one Truck bearing No.CG17GA-0417 (hereafter, referred to as 'offending vehicle'), driven by NA1 rashly and negligently, dashed bicycle of Balsingh and caused accident. In the accident, he succumbed to motor accidental injuries on the spot.

3) Claimants, who are widow, children, and father of deceased filed application under Section 166 of the Act of 1988 seeking total compensation of Rs.11,04,000/- on different heads against death of Balsingh, pleading therein that on the date of accident deceased was able bodied person, working as labourer and earning Rs.6,000/- per month. Claimants were dependants upon income of deceased. During the pendency of claim application, father of deceased, claimant-1 died and his name was deleted from array of cause title of claim application.

4) NA1 and NA2, Driver and Owner of offending vehicle submitted reply to claim application resisting the claim. It was further pleaded that on the date of accident, offending vehicle was insured with NA3, and NA1 was possessed with valid and effective driving license.

5) NA3/Insurance Company submitted its reply to claim application denying the claim. It was further pleaded that on the date of accident NA1, driver of offending vehicle was not possessed with valid and effective driving license. There was breach of policy conditions.

6) Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, held that late Balsingh died on account of motor accidental injuries due to rash and negligent driving of

offending vehicle by NA1, offending vehicle was being plied according to terms and conditions of Insurance Policy, assessed income of deceased as Rs.3,000/- per month, calculated and awarded total sum of Rs.4,53,000/- as total compensation to the claimants.

7) Shri Praveen Durandhar, learned counsel for appellants would submit that learned Claims Tribunal erred in awarding meagre sum of compensation, in the facts and circumstances of the case. On the date of accident, deceased was aged about 30 years, working as labourer, hence, learned Tribunal ought to have accepted income of deceased as pleaded in claim application and stated before Tribunal by claimants witnessess in their evidence. Amount of compensation towards future prospects is not awarded over looking age of deceased and date of accident. Compensation awarded on other conventional heads is also on lower side. In support of his contention, he placed reliance upon decisions of Hon'ble Supreme Court in cases of **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121, **National Insurance Company Vs Pranay Sethi** reported in **2017 16 SCC 680** and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others,** (2018) 18 SCC 130.

8) No one appeared on behalf of respondents-1, 2 and 3 even when the case is taken up for hearing in the 2nd round in post-lunch session.

9) I have heard learned counsel for the parties and also perused record of claim case.

10) Perusal of award would show that learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded total compensation of Rs.4,53,000/- and fastened liability to satisfy amount of compensation upon NA3/Insurance Company. This appeal is for enhancement of amount of compensation.

11) So far as the submissions of learned counsel for the appellants with respect to assessment of income of deceased on the date of accident is concerned, perusal of record of claim case would show that date of accident is 06.02.2015, and FIR was lodged on the same day, as appearing from Ex.A1 (copy of FIR)s. Claimants in their claim application, have pleaded occupation of deceased to be Supervisor in the Industry of Cement and Bricks and pleaded his income as Rs.6,000/- per month. To prove the pleadings made in claim application, one Hiraram Yadav was examined as AW1, who in his evidence admitted that on the date of accident, he along with deceased Balsingh were returning from Factory to their home and on the way, accident took place. He further stated that he was working in Cement and Bricks factory. Appellant-1 was examined as AW2. In her evidence, she stated that her husband was earning Rs.6,000/- per month and further, admitted that she has not placed any document on record to prove his income.

12) In view of aforementioned pleadings and evidence and in absence of any admissible piece of evidence with regard to income of deceased, his income is to be assessed on Notional basis. For computing income of deceased on Notional basis, some factors like date of accident, wage structure, nature of occupation, cost of living etc., are to be kept in mind.

Considering date of accident as 06.02.2015 and also considering aforementioned factors, I find it appropriate to reckon income of deceased as Rs.5,000/- per month instead of Rs.3,000/- as assessed by Tribunal. It is ordered accordingly.

13) Award of compensation towards future prospects has been considered and decided by Hon'ble Supreme Court in case of **National Insurance Company Vs Pranay Sethi** reported in (2017) 16 SCC 680 and held that where the deceased/victim was below the age group of 40 and not in permanent employment, there shall be addition of 40% of his established income for calculating total income of deceased on the date of accident. In case at hand, on the date of accident, deceased was only 30 years of age ie less than 40 years of age, hence, there shall be addition of 40% of established income of deceased for calculating total income. It is ordered accordingly.

14) Learned Claims Tribunal has correctly applied deduction and multiplier as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121 .

15) Tribunal awarded only Rs.45,000/- on other conventional heads. Award of compensation on other conventional heads has also been considered by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and specified the heads as also quantified the amount of compensation on each head, which are loss of consortium, loss of estate and funeral expenses.

16) Hon'ble Supreme Court in case of **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others,** (2018) 18 SCC 130 has further explained types of loss of consortium and held that there are three types of loss of consortium ie loss of spousal consortium, loss of parental consortium, loss of fillial consortium.

17) Claimants shall be entitled for compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

18) For the foregoing reasons, amount of compensation to be awarded to the claimants requires re-computation and re-calculation which is as under:

a) Income of deceased has been taken as Rs.5,000/- per month and Rs.60,000/- per annum.

b) By adding 40% of established income of the deceased towards future prospects, yearly income of the deceased comes to Rs.84,000/- {60000 + (60000 x 40/100)}.

c) After deducting 1/ 3rd from the actual income of deceased towards personal and living expenses, annual loss of dependency comes to Rs.56,000/- {84000 — (84000 x 1/3)}.

d) Upon applying multiplier of 17 to the annual loss of dependency, total loss of dependency comes to Rs.9,52,000/- (56000 X 17).

e) Apart from above, claimants are further entitled for Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

19) Now, appellants/claimants shall be entitled for Rs.10,62,000/-, as compensation instead of Rs.4,53,000/- as awarded by the Tribunal.

20) Aforementioned amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization. Amount of compensation be apportioned in the ratio as fixed by learned Claims Tribunal. Other conditions of award shall remain intact.

21) In the result, appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma