NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 569 of 2016

1. Smt. Kaushaliya Bai Das, E/o Late Ubaran Das, Aged about 42 years,
2. Heerakant Das, S/o Late Ubaran Das, aged about 16 years (Minor)
3. Keran Das, S/o Late Ubaran Das, aged about 09 years (Minor),

(Appellant No. 2 and 3 being minor on behalf of through their legal guardian mother Smt. Kaushaliya Das W/o Late Ubaran Das) All R/o – Village – Pangaon, Post Office – Pangaon, Police Station & Tahsil – Balodabazar, District – Balodabazar – Bhatapara, C.G.

---- Appellants

Versus

1. Suresh Banjare, S/o Ganga Prasad Banjare, Non-Claimants Occupation – Vehicle Owner, R/o Village – Pangaon, Post Office – Pangaon, Ward No. 7, Police Station and Tahsil – Balodabazar, District – Balodabazar – Bhatapara, C.G.
2. The ICICI Lombard General Insurance Company Limited, through Divisional Manager, Divisional Office, Vanijiya Bhawan, Devendra Nagar Road, Raipur, Tahsil & District – Raipur, C.G.

---- Respondents

For Appellants	:	Shri Ishwar Jaiswal, Adv. On behalf of Shri Shivendu Pandya, Advocate
For Respondent No.1	:	Shri A.L. Singroul, Advocate
For Respondent No.2	:	Shri Tessy Abraham, Advocate

Hon'ble Shri Parth Prateem Sahu

Order On Board

10.09.2021

1. Appellant/Claimant has filed this appeal under Section 173 of the Motor Vehicle Act, 1988 (for short 'Act of 1988') challenging the impugned award dated

20.11.2015 passed by Chief Motor Accident Claims Tribunal, Raipur, C.G. in Claim Case No.100/2012 whereby Tribunal allowed application for grant of compensation in part, awarded total sum of Rs.4,39,000/- with interest @ 6% from the date of application as compensation in a fatal accident case.

2. Facts of the case in nutshell are that on 27.10.2011 at about 7.00 p.m. Ubaran Das was traveling on his bicycle and going on Balodabazar – Kasdol Road.

3. While so one motorcycle bearing registration No. CG 04 DY 4967 driven rashly and negligently by non-applicant No.1 dashed the bicycle of Ubaran Das and caused accident. On account of motor accidental injuries Ubaran Das died.

4. Claimants who are widow and children of deceased filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.55,50,000/- pleading therein that on the date of incident Ubaran Das was working as Security Guard and earning Rs.3,500/- per month. Claimants were dependent on the income of the deceased.

5. Non-applicant No.1 owner and driver of the motorcycle submitted its reply to the claim application denying the facts pleaded therein. It was further pleaded that on the date of accident offending motorcycle was insured with

non-applicant No.2/Insurance Company as such liability if any to satisfy the amount of compensation would be upon non-applicant No.2. The Insurance company/Non-applicant No.2 submitted its separate reply pleading therein that there was contributory negligence on the part of deceased. Non-applicant No. 1 - driver of the motorcycle was not possessed with valid and effective driving license as such there was breach of policy conditions.

6. Claims Tribunal upon appreciation of pleadings and evidence placed on record by respective parties, held that Ubaran Das died on account of motor accidental injuries due to rash and negligent driving of offending motorcycle by non-applicant No.1. Contributory negligence on part of the deceased and breach of policy conditions of the offending motorcycle was not found to be proved assessed income of the deceased as Rs.3,500/- per month and awarded Rs.4,39,000/- as compensation to the claimants.

7. Learned counsel for the appellants would submit that this appeal is filed seeking enhancement of the amount of compensation. Tribunal though considered age of the deceased as 45 years but have not awarded any compensation towards future prospects. Applied multiplier of 13 overlooking age of the deceased

mentioned in the claim application postmortem report and have held the age of the deceased on the date of incident to be in between 45 - 50 years erroneously. He submits that age of the deceased in postmortem report is mentioned as only 43 years of age and in the claim application his age is pleaded as 45 years, hence, age of the deceased for the purpose of applying multiplier ought to be have been taken in between 41-45 years and appropriate multiplier of 14 ought to have been applied instead of 13. Lastly, it is submitted that the amount of compensation awarded on other conventional heads are on lower side. In support of his contention learned counsel for the appellant places' reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma & ors. Vs. Delhi Transport Corp. & anr.*** reported ***in (2009) 6 SCC 121, National Insurance Company Limited Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680*** and ***Magma General Insurance Company Vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 2 SCC 763.***

8. Shri Singroul, Counsel for the Respondent No.1 submits that the amount of compensation awarded by claims Tribunal is just and proper which does not call for interference.

9. Shri Tessy Abraham, Counsel for the Insurance Company submits that the claimants themselves in their claim application pleaded age of the deceased as 45 years and therefore in absence of any documentary evidence with respect to proof of age of deceased, Tribunal rightly reckoned his age in between 45-50 years. He submits that the amount of compensation awarded in the facts and circumstances of the case is just and proper which does not call for any interference.

10. Heard learned counsel for the parties and perused record of claim case.

11. So far as age of the deceased reckoned by the Tribunal in between 45-50 years is concerned, in claim application, age of the deceased is mentioned as 45 years on the date of incident. In postmortem report his age is mentioned as 43 years.

12. In absence of any documentary evidence proper course for considering age of the deceased would be age mentioned in the postmortem report as well as considering the pleadings made by the claimants.

13. In the claim application appellants have pleaded age of deceased as 45 years, whereas in the postmortem report (Ex-P/6) his age is shown as 43 years. In the aforementioned facts of the case I find it appropriate to reckon age of deceased in between 41-45 years. It is

ordered accordingly.

14. Award of compensation towards future prospects has been considered by Hon'ble Supreme Court in case of ***Pranay Sethi*** (supra) and held that where deceased was not in permanent employment and in between 40-50 years of the age, there shall be addition of 25% of the established income to the income of deceased for calculating his total income on the date of incident. This Court has reckoned age of the deceased on the date of incident to be in between 41-45 years and therefore there shall be addition of 25% of the established income to the income of deceased. In view of the age as held by this Court appropriate multiplier as held by Hon'ble Supreme Court in the case of ***Sarla Verma*** (supra) would be 14 instead of 13. It is ordered accordingly.

15. So far as submission with regard to award of compensation on other conventional heads is concerned it was considered by the Hon'ble Supreme Court in case of ***Pranay Sethi*** (supra) and specified the heads for awarding compensation on other conventional heads as loss of consortium, loss of estate, and funeral expenses and also quantified the amount of these heads. In case of ***Magma General Insurance Company Vs. Nanu Ram alias Chuhru Ram and others*** ***(supra)***, the Hon'ble Supreme Court has further explained the types

of loss of consortium and held that the loss of consortium to be of three types i.e. loss of spousal consortium, loss of parental consortium and loss of filial consortium.

16. The appellants will be entitled for amount compensation on other conventional heads in accordance with the law laid down by the Hon'ble Supreme Court in the aforementioned judgments. For the foregoing reasons I propose to re-compute the amount of compensation to be awarded to appellants.

17. Income of deceased as assessed by Tribunal was Rs. 3,500/- per month and Rs. 42,000/- per annum. Upon adding 25% to annual income total income will be Rs.42,000/- + (25% of Rs.42,000/-) = Rs.52,500/-. After deducting 1/3rd towards personal and living expenses from the total annual income of the deceased, annual loss of dependency will come to Rs.35,000/- = [(52,500/- - (Rs.52,500/3)], upon applying the multiplier of 14 to annual loss of dependency total loss of dependency will come to Rs.4,90,000/-. Besides the compensation towards loss of dependency, appellants will further be 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 + Rs. 15,000/- towards funeral expenses. Now, the appellant

claimant shall be entitled for total sum of Rs.6,00,000/- as compensation instead of Rs. 4,39,000/- as awarded by the claims Tribunal. Aforementioned amount of compensation shall carry interest @ 6% from the date of filing of the claim application. Liability to satisfy the amount of compensation shall be upon the non-applicant No.1 & 2 jointly and severally. Other conditions of the impugned award shall remain intact.

18. 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

yasmin