NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1555 of 2015

1. Sumitra Devi, Wd/o Late Bhaiyalal Sahu, Aged About 45 Years
2. Ku. Anita D/o Late Bhaiyalal Sahu, Aged About 17 Years Minor
3. Savita D/o Late Bhaiyalal Sahu, Aged About 15 Years Minor
4. Ramprasad S/o Late Gogal Sahu, Aged About 70 Years
5. Hansarniya W/o Shri Ramprasad Sahu Aged About 65 Years **Died - Deleted** ....Claimants

   Minors Appellants-2 and 3 through their natural guardian ie mother Sumitra Devi.

   All are resident of Chingrajpara, PS Sarkanda, District-Bilaspur (CG)

---- Appellants

Versus

1. Branch Manager, the Oriental Insurance Company Limited , Ambikapur, Chhattisgarh, Through The Divisional Manager, The Oriental Insurance Company Limited, Near Bus Stand, Bilaspur, Tahsil And Distt. Bilaspur, Chhattisgarh Insurer Vehicle No. C.G.15 Z G 0279, Chhattisgarh
2. Lakhan Singh S/o Shri Ramgopal Singh, Aged About 22 Years R/o Sa. Govindpur, P.S. Surajpur, Distt. Surguja, Chhattisgarh Driver Vehicle No. C.G.15 Z G 0279
3. Shri Prasad S/o Shri Moharsai, Age not mentioned, R/o Village And Post Salhi, Surajpur, Distt. Surajpur, Chhattisgarh Driver Vehicle No. C.G.15 Z G 0279
4. Savitri Devi W/o Shri Ramnath Sahu, Aged About 50 Years R/o Village-Amhar, Targawan, P.O. Patna, Distt. Korea, Chhattisgarh **Died- Deleted,** District : Koriya (Baikunthpur), Chhattisgarh
5. Pradeep @ Prem Sai S/o Late Bhaiyalal Sahu, Aged About 29 Years R/o Village Satpata, Vishrampur, Tahsil And Distt. Surajpur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Pushkar Sinha, Advocate
For Respondent-1	:	Shri TK Tiwari, Advocate
For other Respondents	:	None appears though

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

16.09.2021

1. Challenge in this appeal is to the award dated 24.08.2015 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur (for short, 'Claims Tribunal') in Claim Case- 448 of 2014, whereby learned Claims

Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded Rs.17,75,000/- as compensation, along with interest @ 6% per annum to be calculated after 60 days of award, in a fatal accident case and fastened liability to satisfy compensation upon NA 1 Insurance Company.

2. Facts of the case relevant for disposal of this appeal are that on 14.08.2010, Bhaiyalal was travelling on his motorcycle and going to Baikunthpur. While so, when he reached to his village Kamalpur, one Tractor bearing No.CG15 ZG 0279 and Trolley bearing No.CG15 ZG 0280 (for short, 'offending tractor') driven by NA2 dashed motorcycle. In the accident, Bhaiyalal suffered grievous injuries and succumbed to those injuries on the spot.

3. Applicants/Appellants, who are widow, children and parents of deceased filed an application under Section 166 of Motor Vehicle Act, 1988 seeking total compensation of Rs.51,91,112/- on different heads on account of untimely motor accidental death of deceased Bhaiyalal. During pendency of claim application, applicant-5, mother of deceased died and her name was deleted.

4. NA1/Insurance Company of offending tractor submitted reply to claim application denying facts pleaded therein. It is further pleaded that amount of compensation claimed to be highly exaggerated; on the date of accident, NA2, driver of offending tractor was not possessed with valid and effective driving license; and Insurance Company of motorcycle is not

arrayed as party non-applicant, hence, claim application is not maintainable for non-joinder of necessary parties.

5. NA2 and 3, driver and owner of offending tractor submitted their reply denying the facts pleaded in claim application. It was pleaded that accident was result of negligence on the part of deceased himself. Amount of compensation claimed is highly exaggerated. NA2 was possessed with valid and effective driving license on the date of accident. Offending tractor was insured with NA1/Insurance Company, as such, liability to satisfy the amount of compensation is upon Insurance Company.

6. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, held that late Bhaiyalal died on account of motor accidental injuries due to rash and negligent driving of offending tractor by NA2. Breach of policy conditions and non-joinder of necessary parties were not found to be proved. Learned Claims Tribunal assessing income of deceased as Rs.15,000/- per month, calculated amount of compensation and awarded Rs.17,55,000/- as total compensation along with interest @ 6% per annum, if amount awarded is not deposited within 60 days of award.

7. Learned counsel for the appellants submits that learned Claims Tribunal erred in considering income of deceased as Rs.15,000/- per month only, overlooking documentary evidence placed on record ie Ex.P9 Salary slip of deceased. He submits that deceased was a Government Servant, working with SECL (South Eastern Coal Fields Ltd) on the post of P Khalasi. Each month, employer/SECL issues Salary Slip showing

income of employee on different heads as well as deductions. Learned Tribunal while assessing income, has taken note of Ex.P9, Salary Slip of deceased for the month of April 2010 and Ex.D4 (another Salary Slip for the month of July 2010) and held that in Salary slip of July, Rs.11,811/- is mentioned under the head of Net Pay and assessed income as Rs.15,000/- per month, which is erroneous. He submits that Tribunal failed to consider evidence of AW3 Tilak Kumar, Personal Manager of SECL under whom deceased was working. In Paragraph-11 of his statement, he clarified as to why two Salary Slips of deceased of same year were exhibited and there is difference in basic pay. Witness has clarified that Basic pay some times differ on the basis of number of days an employee worked in a month. Deceased might not have gone to his work for several reasons on all working days in the month of July, 2010, but what is appearing in Salary slip of April, 2010 that deceased has worked for more period in the month of April and basic salary of deceased has been shown as Rs.15,705.25ps. He submits that apart from basic pay, other allowances are to be added which the deceased received as his income from his employer. In the salary slip, total gross salary of deceased is shown as Rs.42,208.72. Hence, assessment of compensation is to be done considering his gross pay as Rs.42,208.72/-. Tribunal has not awarded any amount of compensation towards future prospects, even though the Tribunal considered deceased to be a permanent employee and aged about 50 years on the date of accident. He submits that in view of decision of Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others reported in** (2017) 16 SCC 680, there will be addition of 30% of established income towards future prospects to income of deceased for the purpose of calculating amount of compensation. Tribunal has not awarded appropriate compensation under other conventional heads and only Rs.20,000/- has been awarded, which also requires enhancement. Learned counsel placed reliance upon judgments of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others,** (2018) 18 SCC 130, and **Sarla Verma Vs DTC** reported in (2009) 6 SCC 121 in support of his contention. It is also contended that learned Tribunal erred in not awarding interest on the awarded amount of compensation from the date of filing application but awarded default interest ie if the amount of compensation is not deposited within 60 days, then amount of compensation shall carry interest @ 6% from the date of award, which is erroneous. The interest be awarded from the date of filing of application.

8. Shri TK Tiwari, learned counsel for the Insurance Company submits that learned Claims Tribunal assessed income of deceased based on last Salary Slip of July, 2010, placed on record by the claimants. Taking into consideration entire facts and circumstances of the case, learned Tribunal awarded just and proper compensation, which does not call for any interference.

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

10. So far as 1st submission of learned counsel for the appellants with regard to income of deceased is concerned, perusal of Ex.P9 would show

that in the month of April 2010, Gross earning of deceased was Rs.42,208.82 ps. It also shows that out of his gross salary, Rs.1,946.12 is towards Sunday wages, Rs.4,272/- towards Bonus and Rs.10,824/- towards LTC. Amount added towards LTC in ExP9 is not the regular income of deceased. Similarly, amount of income from Bonus as shown in Pay Slip is also not regular income. Hence these two amounts cannot be taken into consideration as income for the purpose of calculating amount of compensation.

11. Some times, employees may not receive any bonus for a particular period as shown in salary slip. Sunday wages are also not the wages or earning shown for regular working days, but it is wages for extra work and it is shown as Sunday wages. Taking into consideration nature of employment, where the deceased was working ie Mines, even if there might not be engagement of his service on all Sundays, but looking to nature of employment and place of work, it also cannot be ignored that functioning of Institution is also there on Sunday, hence, I find it appropriate to add 50% of Sunday wages as income of deceased for calculating total income of deceased because if a persons wants to earn more to fulfil the requirement and need of his family members, he can very well do the work on Sunday. Hence, taking pragmatic approach, I am of the view that 50% of the Sunday wages appearing in salary slip can be reckoned as his income.

12. Monthly Gross income of decreased would be (rounded off to rupees) Rs.26, 140/- {42209 — 4272 (Bonus) — 10824 (LTC) — 973 (50% of Sunday wages)} and his yearly income would be Rs.3,13,680/-.

13. Tribunal assessed age of deceased as 50 years on the date of accident which was not challenged and therefore, in view of Hon'ble Supreme court in case of **Pranay Sethi** (supra) there will be addition of 15% of his established income. Hon'ble Apex Court has considered three age groups for awarding future prospects ie less than 40 years, in between 40-50 years, and 50-60 years. Deceased though was in government service, claimants have not placed any document regarding his date of birth. In facts of case, I find it appropriate to add 15% towards future prospects on the annual net income. It is ordered accordingly. Claimants will also be entitled for compensation on other conventional heads as held by Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Ltd** (supra).

14. For the foregoing discussion, the amount of compensation is required to be recalculated/recomputed as under;

a) Annual income of deceased is assessed as Rs.3,13,680/-.

b) By adding 15% to established income of deceased, his total yearly income comes to (rounded off) **Rs.3,60,732/-** {313680 + (313680 x 15/100)}

c) As per Income Tax slab of the year 2010-2011, income up to Rs.1,60,000/- was exempted, income exceeding Rs.1,60,000/- up to 3,00,000/- is taxable @ 10% and income exceeding Rs.3,00,000/- up to Rs.5,00,000/- is taxable @ 20%. Hence, income tax payable will be Rs.1,400 + Rs.12,146.40ps (60732 x 20%). Total tax payable will be Rs.1,3546.40ps. Net income thus comes to Rs.3,47,185.60 ps (360732 —13546.40), rounded off to Rs.3,47,186/-.

d) Net income of deceased will come to Rs.3,47,186/-. Upon deducting personal and living expenses of deceased of 1/4th as number of dependants are 4, annual loss of dependency will come to Rs.2,60,389.5 {347186 — (347186 x ¼)}

e) By applying multiplier of 13 to annual loss of dependency, as applied by Tribunal, total loss of dependency comes to Rs.33,85,063.5.

f) Besides total loss of dependency, appellants are also entitled for Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium to appellants- 2 and 3, Rs.40,000/- towards loss of fillial consortium to appellants- 4 and 5, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

15. Now, appellants/claimants shall be entitled for total compensation of **Rs.35,35,063.5** (3385063.5 + 40000 + 40000 + 40000 + 15000 + 15000) instead of Rs.17,75,000/- as awarded by the Claims Tribunal.

16. Learned Claims Tribunal erred in awarding default interest, that too from the date of passing of impugned award. Award of interest on the amount of compensation is provided under Section 171 of Motor Vehicle Act. Considering that interest can be awarded from the date of filing of claim, I find it appropriate to award interest @ 6% p.a. on the amount of compensation calculated as above from the date of filing of claim application till its realisation.

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

Sd/-
(Parth Prateem Sahu)
JUDGE

padma