

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1527 of 2016**

1. Joharit S/o Siyaram Pidda (DELETED).
2. Smt. Shivbati Pidda W/o Joharit Pidda, aged about 48 Years Caste Halba, R/o Village Jaisakarra, Tahsil Charama, Distt. U.B.Kanker, Chhattisgarh.
3. Ku. Dikeshwari D/o Johrit Pidda, aged about 14 Years Through Legal Guardian Johrit Pidda, Caste Halba, R/o Village Jaisakarra, Tahsil Charama, Distt. U.B.Kanker, Chhattisgarh.

---Appellants/claimants**VERSUS**

1. Bholaram Sahu S/o Vishnu Sahu, aged about 35 Years Caste Teli, R/o Lalpur, Near MMI Hospital, Tahsil and Distt. Raipur, Chhattisgarh **-----Driver**
2. Dilbagh Singh S/o D.Singh, R/o Mahendra Travels, New Bus Stand Pandri, Tahsil and Distt. Raipur, Chhattisgarh **-----Owner**
3. Oriental Insurance Company Limited, Through Branch Manager Raipur Bus Insurer, District : Raipur, Chhattisgarh
4. National Insurance Company Limited, Through Branch Manager, Tahsil And Distt. Dhamtari, Chhattisgarh.

----Respondents

For Appellants	:	Mr. Shalvik Tiwari, Advocate
For Respondent 3	:	Mr. N.K. Malviya, Advocate
For Respondent 4	:	Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****28/09/2021**

1. Challenge in this appeal is to the award dated 11.08.2016 passed by learned Motor Accident Claims Tribunal, Uttar Bastar Kanker, C.G. (for short "Claims Tribunal") in claim case no. 4/2015, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act of 1988") in part, awarded Rs. 5,91,000/- as total compensation in a

fatal accident case.

2. Facts of the case relevant for disposal of this appeal are that on 27.10.2014, at about 08.:30 am, Tukesh was travelling on motor cycle bearing registration no. CG05 V 5138 along with Dhanesh Kumar, while so, one bus bearing number CG04 E 0821 (henceforth "offending bus") driven by non-applicant 1 rashly and negligently dashed the motor cycle and caused accident. In the said accident both the riders of motor cycle suffered serious injuries and succumbed to those injuries.
3. Claimants who are parents and sibling of late Tukesh filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs. 8,20,948/- pleading therein that on the date of accident, deceased was working as mason and earning Rs. 6500/- per month. Claimants were dependent upon income of deceased.
4. Non-applicant 1 did not appear before the Claims Tribunal even after service of notice and was proceeded ex parte.
5. Non-applicant 2/ owner of offending bus submitted reply to the claim application pleading therein that the accident was a result of rash and negligent driving of motor cycle. Non-applicant 1/ driver of offending bus was possessed with valid and effective driving licence. Offending bus was insured with non-applicant 3, hence, liability to pay the amount of compensation, if any, is upon non-applicant 3.
6. Non-applicant 3/ Insurance Company submitted reply to the claim application, denying the facts pleaded therein, it was further

pleaded that non-applicant/ driver of offending bus was not possessed with valid and effective driving licence. Accident was result of rash and negligent driving of driver of motor cycle.

7. Non-applicant 4/ Insurer of motor cycle submitted reply to the claim application, pleading that the amount of compensation claimed is highly exaggerated. Both the riders were not possessed with valid and effective driving licence to drive motor cycle. Accident was result of rash and negligent driving of offending bus by non-applicant 1.
8. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by the respective parties held that Tukesh died on account of motor accidental injuries due to rash and negligent driving of offending bus by non-applicant 1. Contributory negligence on the part of driver of motor cycle, breach of policy conditions of insurance policy of offending bus was not found to be proved. Tribunal upon assessing income of deceased as Rs. 3432/- per month calculated the amount of compensation and awarded total sum of Rs. 5,91,000/-.
9. Mr. Shalvik Tiwari, learned counsel for appellants would submit that the Claims Tribunal erred in assessing income of deceased on lower side overlooking the pleadings and evidence placed on record and awarded meagre sum of compensation. He submits that the claimants in their application have pleaded that deceased was working as mason and earning Rs. 6500/- per month which cannot be said to be on higher side considering the date of accident ie. of 27.10.2014. Tribunal awarded only Rs. 35,000/- on other conventional heads which is also less in view of judgment of

Hon'ble Supreme Court in case of **National Insurance Company Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**.

10. Mr. N.K. Malviya, learned counsel for Respondent 3 submits that learned Tribunal considering the documents placed on record Annexure P-11 has assessed monthly income of deceased recording that the claimants failed to prove nature of occupation and income of deceased as pleaded in the claim application. No cogent and admissible piece of evidence is placed on record except oral evidence of claimants. He further submits that the Tribunal considering entire facts and circumstances of the case awarded just amount of compensation which does not call for any interference. He lastly submits that the Tribunal added 50% of the established income towards future prospects which is on higher side than what is held by Hon'ble Supreme Court in case of **Pranay Sethi (supra)**.
11. Mr. Dashrath Gupta, learned counsel for Respondent 4 submits that the liability to satisfy the amount of compensation is upon respondent 3. However, he supported the award passed by learned Claims Tribunal.
12. I have heard learned counsel for respective parties and also perused the record of claim case.
13. So far as the first submission made by learned counsel for appellants with regard to assessment of income of deceased, learned Claims Tribunal in paragraph 25 of the impugned award dealt the issue of assessment of income of the deceased. Tribunal considering the pleadings and evidence of claimants came to

conclusion that they failed to prove income by placing any documentary evidence on record. Claims Tribunal thereafter considered the document Annexure P-11 placed on record and assessed income of deceased as Rs. 3432/- per month. Perusal of Annexure P-11 would show that it was issued under the signature of Labour Commissioner under the Minimum Wages Act. In the said document, three parts have been shown for fixing of the wages ie. wages for unskilled labourer, semi-skilled labourer and skilled labourers from 01.10.2014 to 31.03.2015. Monthly wages of the unskilled labourer has been shown as Rs. 5517/- In the said document, total wages have been bifurcated as basic wages Rs. 3432/-, Dearness Allowance (DA) Rs. 2085/- and thereby calculated the total wages as Rs. 5517/- per month. Claims Tribunal has taken into consideration Ext. P-11 for assessing the wages of the deceased treating him to be un-skilled labourer. Tribunal considered only part of wages ie. Basic wages and has not considered the other part ie. D.A. for computation of total monthly wages, hence, in the opinion of this Court, learned Claims Tribunal erred in assessing wages of deceased as Rs. 3432/- per month only. Ext. P-11 shows total wages of Rs. 5517/- for un-skilled labourer, hence, in view of the documentary evidence available on record and relied upon by Tribunal partly, hence, income assessed is not sustainable. For the foregoing reasons, I find it appropriate to reckon the monthly wages/ earnings of deceased as Rs. 5500/-.

14. Coming to the other part of award, application of deduction and multiplier is in consonance with the rulings of Hon'ble Supreme Court in case of **Sarla Verma & others v. Delhi Transport Corp. & anr.** reported in **(2009) 6 SCC 121**. Claims Tribunal added 50%

of established income towards future prospects which is little more than what is held by Claims Tribunal in **Pranay Sethi's case (supra)** which in the facts of the case should be 40%. In the appeal filed by claimants, award of compensation towards future prospects is also required to be re-computed so that the compensation calculated be just. Award of compensation on other conventional heads has been considered by the Supreme Court in case of **Pranay Sethi (supra)** and **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in **(2018) 18 SCC 130**. Claimants will be entitled for amount of compensation on other conventional heads according to aforementioned rulings of Supreme Court.

15. For the foregoing reasons, I propose to recompute the amount of compensation to be awarded to the claimants.
16. Income of deceased is reckoned as Rs. 5500/- per month ie. Rs. 66000/-. Upon adding 40% of the established income in the income of deceased, total income will come to Rs. 92,400/- Deceased was unmarried, therefore, after deducting $\frac{1}{2}$ towards personal and living expenses of deceased, annual loss of dependency will come to Rs. 46,200/-. Upon applying multiplier of 18 as applied by the Claims Tribunal, total loss of dependency will come to Rs. 8,31,600/- [Rs.46200x18]. Apart from the amount of compensation towards loss of dependency, appellants will further be entitled for Rs. 40,000/- towards loss of filial consortium, Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenses.
17. Now the appellants/ claimants shall be entitle for total sum of **Rs. 9,01,600/-** [Rs.831600+ Rs.40000+ Rs.15000+ Rs.15000] as

compensation instead of Rs. 5,91,000/- as awarded by learned Claims Tribunal. Amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till its realization. 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 herein-above.

Sd/-
(Parth Prateem Sahu)
Judge