NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1526 of 2016

1. Smt. Malti Bai, W/o Late Sukhram Pidda, Aged About 50 Years,
2. Ku. Thameshwari, D/o Late Sukhram Pidda, Aged About 20 Years,
   Both by Caste Halba, R/o Jaisakarra, Tahsil Charama, Distt. U.B. Kanker, Chhattisgarh.

---- Appellants

Versus

1. Bholaram Sahu, S/o Vishnu Sahu, Aged About 35 Years, By Caste Teli, R/o Lalpur, Near MMI Hospital, Tahsil and Distt. Raipur, Chhattisgarh.
2. Dilbagh Singh, S/o D. Singh, R/o Mahendra Travels, New Bus Stand Pandri, Tahsil and Distt. Raipur, Chhattisgarh.
3. Oriental Insurance Company Limited, through Branch Manager, Raipur Bus Insurer, Chhattisgarh.
4. National Insurance Company Limited, through Branch Manager, Tahsil and Distt. Dhamtari, Chhattisgarh.
5. Smt. Pushplata, W/o Late Dhanesh Kumar Pidda, By Occupation Shiksha Karmi, Govt. School Gondalpal, Konta Block.
6. Yotish Kumar, S/o Late Dhanesh Kumar, Aged About 2 Years, through Legal Guardian Smt. Pushplata (mother of respondent No.6).
7. Dinesh Kumar Pidda, S/o Late Shukhram Pidda, Aged About 22 Years.
   Respondent No.5 to 7 by Caste Halba, R/o Jaisakarra, Tahsil Charama, Distt. U.B. Kanker, Chhattisgarh.

---- Respondents

For Claimants	: Shri Shalvik Tiwari, Advocate
For Respondent No.3	: Shri Nilkanth Malaviya, Advocate
For Respondent No.4	: Shri Dashrath Gupta, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

28.09.2021

1. Claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 11.08.2016 passed by the Motor Accident Claims Tribunal, North Bastar, Kanker, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.3 of 2015 whereby learned Claims Tribunal

allowed an application filed under Section 166 of the M.V. Act in part and awarded Rs.29,35,000/- as total compensation in a fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 27.10.2014, at about 8.30 AM, Dhanesh Kumar was travelling on Motorcycle bearing No.CG-05/V/5138 along with Tukesh Kumar. While so, one Bus bearing No.CG-04/E/0821 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the Motorcycle, on which, Dhanesh Kumar was travelling and caused accident. In the accident, both the riders of Motorcycle suffered severe grievous injuries on their person and succumbed to those injuries.

3. Claimants, who are widow, children, widowed mother and siblings of Late Dhanesh Kumar filed an application under Section 166 of M.V. Act pleading therein that on the date of accident, deceased was aged about 30 years, working as Assistant Teacher (Panchayat), Primary School, Puriyara, Narharpur Block and earning Rs.20,280/- per month as salary. It was further pleaded that claimants were dependent upon income of the deceased and claimed Rs.51,93,040/- as compensation against motor accidental death of Late Dhanesh Kumar.

4. Non-applicants No.1/driver of offending vehicle even after service of notice did not choose to appear before learned Claims Tribunal, he was proceeded *ex parte*.

5. Non-applicant No.2/owner of offending vehicle submitted reply resisting the claim pleading therein that accident was a result of rash and negligent driving of Motorcycle by its driver i.e. deceased. It was further pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3, as such, liability, if any, to satisfy the compensation would be upon non-applicant No.3/Insurance Company.

6. Non-applicant No.3/Insurance Company submitted reply resisting the claim pleading therein that amount of compensation claimed is highly exaggerated; non-applicant No.1/driver of offending vehicle was not possessed with valid and effective driving licence, there was breach of policy conditions, hence, Insurance Company is not liable to indemnify the insured.

7. Non-applicant No.4/Insurer of Motorcycle submitted reply to claim application pleading therein that amount of compensation claimed is highly exaggerated; both the riders of Motorcycle were not possessed with valid and effective driving licence. Accident was a result of rash and negligent driving of offending vehicle by non-applicant No.1.

8. On appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal held that Dhanesh Kumar died on account of motor accidental injures suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1; contributory negligence on the part of driver of Motorcycle and breach of policy conditions of insurance policy of

offending vehicle were not found to be proved and awarded Rs.29,35,000/- as total compensation.

9. Shri Shalvik Tiwari, learned counsel for the claimants would submit that learned Claims Tribunal erred in assessing income of deceased as Rs.1,80,000/- per annum for the purpose of calculating the amount of compensation, which is perverse to the documentary evidence placed on record i.e. salary slip (Ex.P/11). He further submits that in salary slip (Ex.P/11), total income of deceased has been shown as Rs.20,280/- per month. The document was proved by Mukesh Kumar (AW-2), Assistant Grade-III, working in the office of Block Education Officer, Narharpur, hence, for the purpose of computing the amount of compensation, total income of deceased ought to be taken into consideration. It is contended that there are total five dependents including one brother and one sister, as father of Late Dhanesh Kumar was pre-deceased, therefore, siblings who are of tender age of 22 and 20 years were also dependent upon income of deceased, hence, appropriate deduction in view of ruling of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, will be 1/4th instead of 1/3rd applied by Claims Tribunal. It is further contended that learned Claims Tribunal has rightly applied the multiplier of 16 and added 50% of income assessed by Claims Tribunal. He further argued that amount of compensation awarded on other conventional heads is on lower side in the

facts and circumstances of the case and in view of the judgments rendered by Hon'ble Supreme Court in case of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**. He lastly argued that amount of compensation to be suitably enhanced.

10. Per contra, Shri Nilkanth Malaviya, learned counsel for respondent No.3/Insurance Company of offending vehicle would submit that learned Claims Tribunal considering entire facts and circumstances of the case, awarded just amount of compensation by adding 50% of established income of deceased, towards future prospect, which does not call for any interference.

11. Shri Dashrath Gupta, learned counsel for respondent No.4/Insurance Company of Motorcycle would submit that liability to satisfy the amount of compensation is upon insurer of offending vehicle only i.e. respondent No.3. He, however, supports the impugned award passed by learned Claims Tribunal.

12. I have heard learned counsel appearing for the respective parties and perused the record carefully.

13. To appreciate the submissions of learned counsel for the claimants with regard to assessing income by Claims Tribunal for the purpose of calculating amount of

compensation is concerned, learned Claims Tribunal though considered gross income of deceased as Rs.20,280/-, deducted certain amounts from gross income, towards expenditure upon mother and sibling, assessed Rs.1,80,000/- as dependency of claimants. Claims Tribunal added 50% of dependency towards future prospects and assessed annual dependency as Rs.2,70,000/-. Learned Claims Tribunal further deducted 1/3rd towards personal and living expenses of deceased.

14. For the purpose of calculating amount of compensation, gross income of deceased is to be taken into consideration less income tax, which is statutory deduction. To prove income of deceased, claimants have placed on record Ex.P/11, which is salary certificate issued by Block Education Officer on 12.11.2014. Mukesh Kumar was examined as AW-2, Assistant Grade-III, working in the office of Block Education Officer, Narharpur at that relevant point of time. In his evidence, he stated that as per salary certificate issued on September 2014 (Ex.P/11), gross income of deceased as Rs.20,280/- per month and after deducting amount of CPF, deceased was getting net salary of Rs.18,252/-. In view of aforementioned oral and documentary evidence placed on record by the claimants, gross income of deceased is proved as Rs.20,280/- and learned Claims Tribunal erred in not considering income of deceased as Rs.20,280/- per month and Rs.2,43,360/- per annum. Gross income of deceased is

reckoned as Rs.20,280/- per month and Rs.2,40,360/- per annum.

15. Hon'ble Supreme Court in case of **National Insurance Company Vs. Indira Shrivastava** reported in **(2008) 2 SCC 763** has held that for the purpose of computing the amount of compensation, income to be taken into consideration is gross income – income tax, hence, there shall be deduction of income tax at the rate of 10% as prevailing on the date of accident. In the financial year 2014-15, income upto Rs.2,50,000/- was exempted and 10% tax is to be charged on income exceeding Rs.2,50,000/- upto Rs.5,00,000/-.

16. Learned Claims Tribunal erred in applying deduction of 1/3rd overlooking number of dependents of deceased. There are total five dependents as held in preceding paragraph, hence, there shall be deduction of 1/4th towards personal and living expenses as held by Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra).

17. Learned Claims Tribunal has awarded only Rs.55,000/- on other conventional heads. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the head on which compensation under other conventional heads to be awarded, such as, loss of consortium, funeral expenses and loss of estate, further quantified the compensation on each head as Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. Types of 'consortium' has been subsequently explained by the Apex Court in case of **Nanu Ram Alias Chuhru Ram** (supra), to be of three types; (i) spousal

consortium (payable to the surviving spouse because of the death of the partner), (ii) parental consortium (payable to children because of the death of parents); (iii) and filial consortium (payable to the parents because of the death of children). Hence, claimants will be entitled for the compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

18. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimants requires re-computation, which is as under :

Income of the deceased is reckoned as Rs.20,280/- per month i.e. Rs.2,43,360/- per annum. As deceased on the date of accident was less than 40 years of age, there shall be addition of 50% of established income. By adding 50% of established income towards future prospects, total annual income of deceased will come to Rs.3,65,040/- (2,43,360 x 50% = 1,21,680 and 2,43,360 + 1,21,680). From total income of deceased, income tax is to be deducted. Total income of deceased is assessed as Rs.3,65,040/-. In the financial year 2014-15, income upto 2,50,000/- was exempted from tax, hence, taxable income of deceased will come to Rs.1,15,040/- (3,65,040 – 2,50,000). On income exceeding Rs.2,50,000/- upto Rs.5,00,000/-, income tax at the rate of 10% is to be charged. Taxable income of deceased is taken as Rs.1,15,040/-, tax at the rate of 10% on it is Rs.11,504/-. After deduction of income tax of

Rs.11,504/- from total annual income, net income of deceased will be Rs.3,53,536/- (3,65,040 – 11,504). After deducting 1/4th towards personal and living expenses, annual loss of dependency will be Rs.2,65,152/- (3,53,536 / 4 = 88,384 and 3,53,536 – 88,384). Upon applying the multiplier of 16 to annual loss of dependency, total loss of dependency will come to Rs.42,42,432/- (2,65,152 x 16). Besides the amount of compensation towards loss of dependency, claimants are further entitled for a sum of Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, **Rs.40,000/- towards loss of filial consortium,** Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses.

19. Now, claimants are entitle for total compensation of Rs.43,92,432/- (42,42,432 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.29,35,000/- as awarded by learned Claims Tribunal. Enhanced amount of compensation will carry interest at the rate of 7% per annum from the date of filing of the claim application till its realization. Other conditions of the award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh