NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 906 of 2015

1. Ramlal Sahu S/o Late Milapram Sahu, Aged About 30 Years
2. Kheduram Sahu S/o Late Milapram Sahu, Aged About 26 Years (wrongly mentioned as 26 months in the judgment)
   Both are R/o Village Sankra, Tahsil Magarlod, District Dhamtari, Chhattisgarh.

---- Appellants

Versus

1. Thamendra Kumar Sahu S/o Shardacharan, Aged About 32 Years, R/o Village Darra, Post Darra, Tahsil Kurud, District Dhamtari, Chhattisgarh.
2. Dhalchand Sahu S/o Harishchand, Aged About 60 Years, R/o Village and Post Darra, Tahsil Kurud, District Dhamtari, Chhattisgarh.
3. Branch Manager, I.C.I.C.I. Lombard General Insurance Company Limited, I.C.I.C.I. Lombard House 414, Veer Sawarkar Marg, Near Siddhi Vinayak Temple, Mumbai 400025
   Branch Office, Vanijya Bhawan, Devendra Nagar, Raipur, Post Pandri, Tahsil and District Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Shri H.A.P.S. Bhatia, Advocate on behalf of Shri Anil Gulati, Advocate
For Respondents 1 & 2	: None
For Respondent No. 3	: Shri Sourabh Sharma, Advocate

(Proceedings through Video Conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

27.08.2021

1. Challenge in this appeal is to the impugned award dated 07.05.2015 passed by Additional Motor Accident Claims Tribunal, Dhamtari, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.25 of 2014 whereby learned Claims Tribunal allowed application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') in part and awarded total sum of Rs.4,68,040/- as compensation in a fatal accident case.

2. Brief facts for disposal of this appeal are that, on 03.06.2013, Milapram Sahu was travelling on motorcycle bearing No.CG-05/R/1530 along with Kheluram Sahu, when he was on a bypass road at Pachripara, Kurud, one another motorcycle bearing No.CG-04/KC/7539 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the motorcycle of Milapram Sahu and caused accident. In the said accident, Milapram Sahu suffered grievous head injuriey. He was initially taken to Community Health Centre, Kurud and upon looking to the injury, he was referred to higher hospital. He was admitted to Shri Medishine Hospital, Raipur on 04.06.2013 up to 15.06.2013. Thereafter, he was shifted to Mekahara Hospital, Raipur, where he died on 17.06.2013.

3. Appellants/claimants who are major sons of deceased Milapram Sahu filed an application under Section 166 of M.V. Act seeking compensation of Rs.23,21,500/- pleading therein that on the date of accident, deceased was able-bodied person, aged about 52 years, working as Contractor under Rural Engineering Services Department and earning Rs.2,00,000/- per annum.

4. Non-applicants No. 1 and 2, who are driver and owner of offending vehicle submitted reply to claim application and denied the facts pleaded therein. It was further pleaded that non-applicant No.1 was possessed with valid and effective driving licence; offending vehicle was insured with non-applicant No.3 and accident was a result of negligence on the part of deceased himself, as such, liability, if any,

to satisfy the amount of compensation would be upon non-applicant No.3.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, resisted the claim. It was further pleaded that on the date of accident, non-applicant No.1 was not possessed with valid licence, as such, there was breach of policy conditions; there was contributory negligence on the part of deceased and amount of compensation claimed is highly exaggerated.

6. On appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal held that Milapram Sahu died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1, contributory negligence on the part of deceased as well as breach of policy conditions were not found to be proved and awarded Rs.4,68,040/- as total compensation.

7. Shri H.A.P.S. Bhatia, learned counsel for the appellants/claimants would submit that learned Claims Tribunal erred in assessing income of deceased as Rs.3,000/- per month only overlooking the age of deceased to be 52 years as well as pleading and oral statement of claimants that on the date of accident, deceased was working as Civil Contractor under Rural Engineering Services Department. He further submits that even if Claims Tribunal arrived at a conclusion that appellants have proved the income by placing documentary and reliable piece of evidence, then also learned Claims Tribunal ought to

have considered income of deceased on notional basis considering his age, date of accident, price index, cost of living and wage structure etc. It is contended that learned Claims Tribunal ought to have assessed the income of deceased at least Rs.5,000/- per month. It is further contended that learned Claims Tribunal has not awarded any amount of compensation towards future prospects, Tribunal ought to have added 10% of established income towards future prospects for the purpose of computing total income of deceased on the date of accident. He argued that learned Claims Tribunal awarded meagre amount of compensation on other conventional heads. Lastly, he argued that learned Claims Tribunal has awarded only Rs.1,84,040/- towards medical expenses instead of Rs.4,50,000/- as pleaded in claim application and submits that appellants be awarded suitable amount of compensation in the facts and circumstances of the case.

8. Per contra, Shri Sourabh Sharma, learned counsel for respondent No.3/Insurance Company submits that appellants have failed to prove income of deceased by placing admissible piece of evidence on record. In absence of cogent evidence, Tribunal has rightly assessed the income of deceased on notional basis. He further submits that medical bills awarded by Claims Tribunal is based on actual payment made through proved bills and total amount of compensation awarded to the appellants/claimants is just and proper, which does not call for any interference.

9. I have heard learned counsel for the parties and perused the record carefully.

10. So far as the submission made by learned counsel for the appellants with regard to assessment of income of deceased is concerned, perusal of record of claim case would show that on the date of accident, deceased was shown to be 52 years of age. Learned Claims Tribunal based on the pleadings and age mentioned in postmortem report (Ex.P/8) reckoned the age of deceased as 52 years. Even if appellants failed to prove the nature of occupation of deceased by placing documentary evidence on record with regard to income of deceased, then also deceased could have been treated as Manual Labourer. On the date of accident, wages of manual Labourer could have been much more than what is assessed by Claims Tribunal. Taking into consideration the date of accident, age of deceased, cost of living, price index and wage structure, I find it appropriate to assess the income of deceased as Rs.4,500/- per month.

11. Hon'ble Supreme Court has settled the issue of awarding future prospects in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** wherein it has been held that where victim/deceased was in between the age group of 50-60 years and not in permanent employment or self employment, then there shall be addition of 10% of established income for assessing total monthly/yearly income of deceased on the date of accident, hence, in

the case at hand where deceased was aged in between 50-60 years, there shall be an addition of 10% in income of deceased. It is ordered accordingly.

12. Learned Claims Tribunal has awarded only Rs.20,000/- towards other conventional heads i.e. Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of love and affection, Rs.5,000/- towards loss of estate. Hon'ble Supreme Court has further fixed the amount and heads, on which, compensation to be awarded towards other conventional heads. Appellants shall be entitled for the compensation as per ruling of the Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130** towards other conventional heads.

13. For the foregoing reasons, amount of compensation to be awarded to the claimants requires re-consideration and re-computation, which is as under :

Income of deceased is reckoned as Rs.4,500/- per month i.e. Rs.54,000/- per annum. Upon adding 10% of the income towards future prospects, total annual income of deceased will come to Rs. 59,400/- (54,000 x 10% = 5,400 and 54,000 + 5,400). There shall be deduction of 1/3rd towards personal and living expenses, which makes annual loss of dependency of claimants to Rs.39,600/- (59,400 / 3 = 19,800 and 59,400 – 19,800). By applying multiplier of 11 to annual loss of dependency, total loss of dependency will come to Rs.4,35,600/- (39,600 x 11). Besides, the compensation towards loss of dependency, appellants/claimants will be further entitled for a sum of Rs.40,000/- towards parental consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

14. So far as submission made by learned counsel for the appellants that compensation awarded against medical expenses is meagre is concerned, upon asking learned counsel for the appellants as to which medical bills are not awarded, he could not able to point out as to which of the medical bills placed on record, marked as exhibited are not considered by Claims Tribunal. Ex.P/69 shows total amount of Rs.1,84,040/- paid by appellants. Particulars of charges of Hospital as appearing from Ex.P/71 would show that total medical charges as Rs.1,91,300/- out of which, Rs.7,260.28 was deducted towards discount, hence, in the opinion of this Court, learned Claims Tribunal has not erred in awarding medical expenses of Shri Medishine Hospital. Appellants have also placed on record cash memo of purchase of medicines from Ex.P/35 and Ex.P/38 to Ex.P/67. Looking to the nature of injuries, period of treatment and cash memo of Shri Medishine Hospital issued by Pharmacy, in the opinion of this Court, appellants/claimants shall be entitled for the amount expended by them towards purchase of medicines by cash. Hence, appellants/claimants are entitled for total sum of Rs.1,00,338/- (Ex.P/35 and Ex.P/38 to Ex.P/67) towards purchase of medicines.

15. Learned Claims Tribunal has not awarded any amount towards conveyance expenses. Appellants are resident of village Sankra, Tahsil Magarload, District Dhamtari. The accident took place at Kurud and deceased for his treatment was taken from Kurud to Raipur and again shifted from Shri Medishine Hospital to Mekahara Hospital. In view of above, I find it appropriate to award Rs.10,000/- towards conveyance expenses and looking to the period of treatment, I find it appropriate to award Rs.10,000/- towards pain and suffering. Appellants are also entitled for a sum of Rs.1,84,040/- towards medical expenses as awarded by learned Claims Tribunal.

16. Now, the appellants/claimants are entitled for total compensation of Rs.8,09,978/- (4,35,600 + 40,000 + 15,000 + 15,000 + 1,00,338 + 10,000 + 10,000 + 1,84,040) instead of Rs.4,68,040/- as awarded by learned Tribunal. The enhanced amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions of award passed by learned Tribunal shall remain intact.

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

Yogesh