NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1054 of 2015

Kamla Devi, W/o Late Shri Goverdhan Das, aged about 48 years, R/o Karwala Talab, Bilaspur, Chhattisgarh, at the present Address Mahaveer Nagar, Raipur, Chhattisgarh.

---- Appellant

Versus

1. Ramesh Kumar Dhruw, S/o Shri Dasrath Dhruw, aged about 30 years, Occupation Driver, R/o Durgapara Santoshi Nagar, Police Station Tikrapara, Raipur, Chhattisgarh.
2. Pawan Thakur, S/o Shri Phiratu Ram Thakur, aged about 34 years, R/o Village Kharora, Raipur, Tahsil and District Raipur, Chhattisgarh.
3. Divisional Manager, Division Office, Oriental Insurance Company, Kachhari Chowk, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant : Shri Jitendra Kumar Gupta, Advocate
For Respondents 1 & 2 : None
For Respondent No. 3 : Shri H.S. Patel, Advocate

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

23.08.2021

1. Challenge in this appeal is to the impugned award dated 11.05.2015 passed by the Chief Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.29 of 2012 whereby learned Claims Tribunal allowed an application filed under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') in part and awarded

Rs.23,33,541/- as total compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization in a fatal accident case and fastened the liability to satisfy the amount of compensation upon non-applicants No.1 to 3 jointly and severally.

2. Brief facts relevant for disposal of this appeal, are that, on 11.03.2011, Goverdhan Das was travelling on vehicle bearing No.CG-10/F/2252 from Simga to Raipur. At about 4.00 PM, when he reached near Dharsiva, one Truck bearing No.CG-04/JB/9760 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the vehicle of Goverdhan Das and caused accident. In the said accident, Goverdhan Das suffered grievous injuries over his head and chest. He was admitted to Ramkrishna Care Hospital, Raipur, where he died during the course of treatment on 22.04.2011.

3. Appellant/claimant, who is widow of Late Goverdhan Das filed an application under Sections 166 and 140 of M.V. Act seeking total compensation of Rs.47,70,000/- towards loss of life pleading therein that on the date of accident, deceased was aged about 50 years and earning Rs.20,000/- per month. She also sought compensation of Rs.3,73,439/- towards repairing of Maruti Wagon-R Car owned by deceased.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application and denied the fact of accident itself. It was pleaded that 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.

5. Non-applicant No.3/Insurance Company submitted reply to claim application, resisting the claim. It was further pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective licence, as such, there was breach of policy conditions. It was further pleaded that deceased himself was contributory negligent in the accident and amount of compensation claimed towards repairing of damaged vehicle of deceased is not correct, hence, Insurance Company be exonerated from its liability.

6. On appreciation of pleadings, oral and documentary evidence brought on record by the respective parties, Tribunal held that Goverdhan Das died on account of motor accidental injures due to rash and negligent driving of offending vehicle by non-applicant No.1, breach of policy conditions and contributory negligence were not found to be proved, while awarding Rs.23,33,541/- as total compensation, fastened liability to satisfy the compensation upon non-applicants No.1 to 3 jointly and severally.

7. Shri Jitendra Kumar Gupta, learned counsel for the appellant/claimant would submit that learned Claims Tribunal has not assessed the income of deceased in appropriate manner. Learned Claims Tribunal has taken net income of deceased for calculating the amount of compensation and not the gross income as held by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Indira Srivastava and others** reported in **(2008) 2 SCC 763**. He further submits that learned Claims Tribunal has not awarded any amount of compensation towards future prospects and erroneously deducted 50% towards personal and living expenses, which ought to have been 1/3rd. It is contended that learned Claims Tribunal erred in not awarding any amount towards loss of estate and submits that amount of compensation be suitably enhanced.

8. Per contra, Shri H.S. Patel, learned counsel for respondent No.3/Insurance Company supporting the award passed by learned Claims Tribunal, would submit that learned Claims Tribunal on appreciation of documentary and oral evidence placed on record has rightly assessed the income of deceased. As there is only one claimant/dependant, Claims Tribunal justified in deducting 50% of income towards personal and living expenses. It is contended that learned Claims Tribunal has awarded just amount of compensation

in the facts and circumstances of the case, which does not call for any interference.

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

10. So far as the submission made by learned counsel for the appellant with regard to assessment of income of deceased is concerned, claimant in support of her pleading with respect to income, placed on record income tax return of assessment year 2009-10 as Ex.P/13 submitted on 27.01.2010, which is certified by the Income Tax Officer, Ward No.1, Bilaspur to be a true copy showing gross income of Rs.1,83,925/-. In Ex.P/14, gross income of deceased is shown as Rs.2,37,160/-. After deducting Rs.56,529/-, net income is shown as Rs.1,80,630/-. Deduction of Rs.56,529/- is under Chapter VI-A of Income Tax Act, 1961 towards Section 80C. This deduction under Section 80C is not to be deducted for computing income of any person for the purpose of assessment of total income of Assessee. For the purpose of computing compensation under the M.V. Act, only tax paid on income is to be deducted from total income of deceased and total tax paid as shown is Rs.4,250/-.

11. Appellant/claimant to prove income of deceased examined one Devraj Pisda, Income Tax Inspector of Income Tax Department, Bilaspur as AW-3, who in his evidence has proved the gross income of deceased as Rs.2,37,160/- of

assessment year 2010-11 (Ex.P/14) and net income after deduction as Rs.1,80,630/-.

12. In view of evidence brought on record by appellant/claimant, particularly, evidence of Devraj Pisda (AW-3), learned Claims Tribunal erred in taking net income of deceased for calculating the amount of compensation instead of gross income. In case of **Indira Srivastava** (supra), Hon'ble Supreme Court has held thus :

> “19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.”

13. In the facts of the case and taking support of aforementioned ruling of Hon'ble Supreme Court for calculating amount of compensation, gross income of Rs.2,37,160/- minus tax paid i.e. Rs.4,250/- = 2,34,710/- is to be taken as income of deceased, hence, I find it appropriate to reckon income of deceased as Rs.2,34,710/-.

14. Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**

reported in **(2009) 6 SCC 121** has laid down the guidelines for applying the deduction and multiplier, wherein it has been held that where the claimant is spouse, there shall be deduction of 1/3rd towards personal and living expenses, which is to be applied in the facts of the case in hand. It is ordered accordingly.

15. So far as the award of compensation towards future prospects is concerned, Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra) and **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** has considered the award of future prospects to the victim/deceased. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that addition of 10% of established income where the victim/deceased is in between 50-60 years of age and is self employed. In view of ruling of Hon'ble Supreme Court, there will be an addition of 10% of established income to the income of deceased towards future prospects for computing total income of deceased on the date of accident. It is ordered accordingly.

16. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the head on which compensation under other conventional heads is to be awarded, such as, loss of consortium, funeral expenses and loss of estate, further quantified the compensation for 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 **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**, 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) and (iii) filial consortium (payable to the parents because of the death of children). Hence, appellant will be entitled for the compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

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

Gross income of deceased is assessed as Rs.2,37,160/- per annum. By adding 10% of income towards future prospects, total annual income of deceased will come to Rs.2,60,876/- (2,37,160 x 10% = 23,716 and 2,37,160 + 23,716). From the gross income, income tax is to be deducted. In the financial year 2010-11, income upto Rs.1,60,000/- was exempted from tax, hence, taxable income of deceased will come to Rs.1,00,876/- (2,60,876 – 1,60,000). On income exceeding Rs.1,60,000/- upto Rs.5,00,000/-, income tax at the rate of 10% is to be charged. Taxable income of deceased is taken as Rs.1,00,876/-, tax at the rate of 10% on it, is Rs.10,087.6, rounded off to Rs.10,088/-. After deduction of income tax of Rs.10,088/- from total annual income, net income of deceased will be Rs.2,50,788/- (2,60,876 – 10,088). After deducting 1/3rd towards personal and living expenses, annual loss of dependency will be Rs.1,67,192/- (2,50,788 / 3 = 83,596 and 2,50,788 – 83,596). After applying the multiplier of 11 to annual loss of dependency, total loss of dependency will come to Rs.18,39,112/- (1,67,192 x 11).

Apart from above amount of compensation towards loss of dependency, claimant is further entitled for a sum of Rs.40,000/- towards spousal consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses. Appellant is also entitled for a sum of Rs.12,68,041/- towards medical expenses as awarded by learned Claims Tribunal.

18. Now, appellant/claimant is entitled for total compensation of Rs.31,77,153/- (18,39,112 + 40,000 + 15,000 + 15,000 + 12,68,041) instead of Rs.23,33,541/- as awarded by learned Claims Tribunal. Amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Liability to satisfy the amount of compensation shall be upon non-applicants No.1

to 3/respondents No.1 to 3 jointly and severally. Other conditions of the impugned award shall remain intact.

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

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh