NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1463 of 2015

1. Smt. Mamta Rathore W/o Late Gaya Prasad Rathore, A/o 27 Years.
2. Pranjal Singh, Aged About 5 Years Minor, Through Natural Guardian Mother Smt. Mamta Rathore.
3. Sarju Prasad S/o Lalli Singh Rathore, Aged About 60 Years.
4. Smt. Ramkali W/o Sarju Prasad Rathore, Aged About 59 Years.

All are R/o : village -Bhadoura, Police Station -Gourela, Tahsil -Pendra Road, District -Bilaspur, Chhattisgarh.

---- Appellants/Claimants

Versus

1. Satyanarayan Soni S/o Sarju Prasad Soni, Aged About 38 Years, R/o -Azad Chowk, Pendra, District -Bilaspur, Chhattisgarh.
2. The Iffco Tokiyo General Insurance Company Limited, 3rd Floor, 345, Lal Ganga Shopping Maal, G. E. Road, Raipur Chhattisgarh 4th Floor, Ravi Bhawan, Jaistambh Chowk, Raipur Chhattisgarh.

-- Non-applicants No.1 & 2//Respondents.

For Appellants	:	Shri Yogendra Chaturvedi, Advocate.
For Respondent No.1	:	None.
For Respondent No.2	:	Shri Amrito Das, Advocate with Shri Tessy Abraham, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Parth Prateem Sahu, Judge
Order on Board

02.08.2021

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') seeking enhancement of compensation awarded by learned Additional Motor Accident Claims Tribunal, Pendra Road, Distt -Bilaspur (CG) vide award dated 17.08.2015 passed in Claim Case No.13/2012 in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 16.12.2011 at about 9:30 pm, Gaya Prasad Rathore alongwith his wife and son was going from Pendra Road to his house situated at village -Bhadoura on Scooty Activa bearing registration No.MP-04/SF/1393. On the way near, house of Ram Vishal Rathore, one Bolero Vehicle bearing registration No.CG04-HA-5770, (for short, 'offending vehicle'), driven by non-applicant No.1 rashly and negligently, dashed the Scooty from front side,

due to which, Gaya Prasad entangled with offending vehicle, dragged for about 100 fts, thereafter, he got separated, thereafter offending vehicle and scooty dashed with electric pole standing on the side of road. Non-applicant No.1 driver of offending vehicle fled away alongwith offending vehicle. In the said accident, Gaya Prasad suffered grievous injuries on his head, chest, mouth and other parts of body and become unconscious. Appellant No.1 wife of Gaya Prasad, also suffered grievous injuries over her person. They were taken to the Community Health Centre from where they were referred to Bilaspur for better treatment. During the course of treatment, Gaya Prasad succumbed to his injuries. Incident was reported to concerned Police Station, based upon which crime bearing No.202/2011 was registered against non-applicant No.1.

3. Claimants, who are widow, children and parents of deceased Gaya Prasad, filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs.62,98,300/- under various heads pleading therein that on the date of accident, deceased-Gaya Prasad was aged about 33 years, he was posted as “Nayak" in Rajput Regiment, Fatahgarh of the Indian Military and getting salary of Rs.20,505/- per month. Claimants were dependant upon income of deceased.

4. Non-applicant No.1 -owner-cum-driver of offending vehicle, submitted reply to application denying pleadings made therein. It was pleaded that on the date of accident, offending vehicle was insured with Non-applicant No.2-Insurance Company. Amount of compensation claimed is highly exaggerated. Deceased himself was responsible for the accident as he came from wrong side of road and dashed against offending vehicle. Front wheel of offending vehicle got burst as a result, driver lost

control over offending vehicle and dashed with electric pole. There was no negligence on the part of non-applicant No.1. Hence, claimants are not entitled for grant of any amount of compensation.

5. Non-applicant No.2/Insurance Company submitted its reply to application, while denying pleadings made therein, further pleaded that on the date of accident, deceased was not possessed with valid and effective driving license to drive Scooty (two wheelers). Offending vehicle was plied in breach of condition of insurance policy as at the time of accident, non-applicant No.1 was under the influence of liquor, which resulted into accident. Driving license of non-applicant No.1 is forged. Hence, Insurance Company is not liable to pay any amount of compensation.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Gaya Prasad died on account of motor-accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1. Breach of Policy conditions were not found to be proved. Tribunal while assessing monthly income of deceased as Rs.17,870/- allowed claim application in part, awarded total sum of Rs.28,72,983/- as compensation along with interest @ 7.5% p.a and fastened liability upon non-applicants No.1 & 2, jointly and severally.

7. Learned counsel for the claimants/appellants submits that Tribunal erred in assessing income of deceased as Rs.17,870/- per month, ignoring the evidence placed on record by claimants with respect to employment and income of deceased vide Ex.P-57, which is last pay/salary certificate issued by Accounts Officer, PAO (OR), Rajput Regiment, Fatahgarh and

proved by AW-3 Sanjay Shrivastava, Accounts Officer. In this document, salary of deceased for the month of December 2011 is mentioned to be Rs.21,277/-. He further submits that deceased was a government servant, but the Tribunal has not awarded any compensation towards future prospects. The amount awarded under other conventional heads are also on lower side. Hence, he prayed that amount of compensation awarded by Tribunal be suitably enhanced.

8. Per contra, learned counsel for respondent No.2/Insurance Company submits that Tribunal after considering evidence with respect to income of deceased has rightly assessed income of deceased as Rs.17,870/- per month as said income was being drawn by deceased on the date of accident. Amount of compensation awarded by Tribunal is just and proper and it does not call for any interference.

9. Heard learned counsel for the parties and also perused the records of claim case.

10. So for as first argument raised by learned counsel for appellants/claimants that assessment of income of deceased is contrary to record is concerned, appellants/claimants in order to prove income of deceased have placed on record documents Ex.P-48 (salary slip) & Ex-P-57 (last salary certificate) issued by the department of deceased. Perusal of their documents would show that total gross pay of deceased, as on 17.12.2011 was Rs.21,277/-. To prove these documents, appellants have examined Sanjay Shrivastava, Accounts Officer as AW-3, who stated in his evidence that deceased was working as 'Nayak' in Rajput Regiment, Fatahgarh and has drawn salary of Rs.21,277/- in the month of December, 2011. Statement of salary (Ex.P-48) mentions

amount credited to Bank as Rs.17,870/-, the Tribunal has considered only the amount credited to bank and not the gross salary, I am of the view that finding recorded by Tribunal with regard to income of deceased is based on erroneous evaluation of evidence which is not sustainable and is hereby repelled, I hold that income of deceased to be taken Rs.21,277/-.

11. Hon'ble Supreme Court in case of **National Insurance Company Ltd vs. Indira Shrivastava & Ors**[1], has considered as to deduction from gross pay of an employee for calculating amount of compensation and held that only income tax is to be deducted from gross pay. Taking into consideration entire facts, documents and evidence available on record and ruling rendered by Hon'ble Supreme Court in case of **Indira Shrivastava & Ors** (supra), I am of the considered view that the gross salary of deceased, as shown in salary slip, after deducting taxes is to be taken for the purpose of calculating just compensation.

12. Coming to the next argument advanced by learned counsel for appellants/claimants that the Tribunal erred in not awarding any amount towards future prospects. The Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**[2]**,** has held that in case the deceased, victim of motor accident, was in permanent employment and below the age of 40 years, an addition of **50%** of establish income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> “59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future

1 (2008) 2 SCC 763,

2 (2017) 16 SCC 680

> prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax"

13. Indisputably, in case at hand, on the date of accident, deceased was aged about **33** years and was in permanent employment, therefore, this Court is of the considered opinion that appellants/claimants are entitled for an addition of 50% of established income of deceased towards future prospect. As regards the multiplier, Tribunal in the given facts and circumstances of the case, has correctly applied multiplier of 16.

14. For the foregoing reasons, I propose to recompute the amount of compensation awarded by the Tribunal.

15. Income of deceased is taken as Rs.21,277/- per month as held above, by adding 50% of income towards future prospects, monthly income of deceased comes to Rs.31,915.5 (50% of Rs.21277 + Rs.21,277) and accordingly yearly income of deceased comes to Rs.3,82,986/- (31915.5 X 12).

16. As per income tax rates/slabs applicable for financial year 2010-11, no tax was payable upto Rs.1,60,000/-, income tax @ 10% was payable on income exceeding Rs.1,60,000/- to Rs.5,00,000/-. So, first Rs.1,60,000/- is not taxable income of deceased and remaining income of deceased ie Rs.2,22,986/- (3,82,986 -160000) is taxable. As per income tax slab prevailing in financial year 2010-11, income tax @ 10% is payable ie Rs.22,298.6 paise (10% of Rs.2,22,986/-), which is rounded off to Rs.22,299/- Accordingly, after deduction of Rs.22,299/- towards income tax from gross income of deceased, net annual income of deceased comes to Rs.3,60,687/- (Rs.3,82,986 - 22,299).

17. Number of dependents on the date of accident were '4', therefore, there will be deduction of 1/4th amount towards personal and living expenses as per decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**[3]. After deducting 1/4th towards personal & living expenses from annual net income of deceased yearly loss of dependency would come to Rs.2,70,515.25 (Rs.3,60,687 - 1/4 of Rs.3,60,687). By applying multiplier of 16, total loss of dependency will come to Rs.43,28,244/- (Rs.2,70,515.25 X 16). Apart from this, in view of the decision of Supreme Court in the case of **Pranay Sethi** (supra) and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram**[4] appellants are also entitled for a sum of Rs.40,000/- towards spousal consortium, Rs.40,000/- towards filial consortium, Rs,40,000/- towards parental consortium, Rs,15,000/- towards funeral expenses & Rs.15,000/- towards loss of estate.

18. Now, appellants/claimants shall be entitled for a total compensation of **Rs.44,78,244/-** (Rs.43,28,244 + 40,000 + 40,000 + 40,000 + 15000 + 15,000) instead **of Rs.28,72,983/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 7.5% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-

3 (2009) 6 SCC 121
4 2018 18 SCC 130