NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 08 of 2016

1. Smt. Reena Rai Wd/o Late Bhawani Chandra Rai, aged about 37 Years
2. Miss Anjali Rai D/o Late Bhawani Chandra Rai, aged about 18 Years
3. Miss Khushi Rai D/o Late Bhawani Chandra Rai, aged about 16 Years
4. Goldi Rai S/o Late Bhawani Chandra Rai, aged about 12 Years

Appellant 2 to 4 are minor through Appellant 1 Smt. Reena Rai.

All are R/o Nayamunda Para Ambedkar Ward Jagdalpur, District Bastar Chhattisgarh.

---Appellants/ Claimants

VERSUS

1. Shrawan Yadav S/o Vakil Yadav, aged about 25 Years R/o Gangamunda Ward, Near Gandhi School Post Bodhghat Jagdalpur District Bastar, Chhattisgarh.

------Driver

2. Vinod Kumar Yadav S/o Nathuni Prasad Yadav, R/o Gandhi Nagar Ward Jagdalpur, District- Bastar, Chhattisgarh

-----Owner

3. Bharati Axa General Insurance Co. Through Branch Manager Chawala Complex First Floor Devendra Nagar Sai Nagar Road Raipur Post Raipur District Raipur, Chhattisgarh

----Respondents

For Appellant	:	Mr. P.K. Tulsyan, Advocate
For Respondent 1& 2	:	Mr. A.L. Singroul, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

ORDER ON BOARD

09/09/2021

1. Challenge in this appeal is to the award dated 13.10.2015 passed by Learned Second Additional Motor Accident Claims Tribunal, Bastar, Jagdalpur C.G. (for short “Claims Tribunal”) in Claim Case no. 54/2015, whereby learned Claims Tribunal allowed the

application filed under Section 166 of the Motor Vehicles Act, 1988 (for short “Act of 1988”) in part, awarded Rs. 4,77,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are, that on 20.09.2014 at about 10:00 p.m. Pavan Rai was travelling on motor cycle along with his friends and going to Jagdalpur from Keshloor. On the way one truck bearing registration no. CG17 GA 8615 (henceforth “offending truck”) coming from opposite direction dashed the motor cycle of Pavan Rai and caused accident. In the said accident, Pavan suffered grievous injuries over his person. He died on the way while taking to Maharani Hospital, Jagdalpur.

3. Claimants who are mother and siblings of the deceased Pavan filed an application under Section 166 of the Act of 1988 seeking total compensation of Rs. 18,62,000/- pleading therein that on the date of accident, deceased was in business of running idli-dosa and fast food stall and thereby earning Rs. 8000/- per month from his work.

4. Non-applicants 1 and 2 submitted reply to the claim application denying the facts pleaded therein, it was further pleaded that late Pavan Rai @ Pintu was not possessed with valid and effective driving licence on the date of accident. More persons than the seating capacity of motor cycle were travelling on it at the time of accident. Accident was on account of contributory negligence on the part of driver of motor cycle. Non-applicant 1/ driver of offending truck was possessed with valid and effective driving licence and offending truck was insured with non-applicant 3/ Insurance Company, as such, liability to pay the amount of compensation, if any, would be of Insurance Company.

5. Non-applicant 3/ Insurance Company of offending truck submitted its reply, resisting the claim. It was further pleaded that owner and insurer of the motor cycle were not impleaded as party non-applicants. As there was accident between two motor vehicles, there was contributory negligence on the part of driver of motor cycle as well. On the date of accident, non-applicant 1/ driver of offending truck was not possessed with valid and effective driving licence.

6. Claims Tribunal, upon appreciation of pleadings and evidence placed on record by the respective parties has held that late Pavan Rai died on account of motor accidental injuries due to rash and negligent driving of offending truck by non-applicant 1. Breach of policy conditions and contributory negligence were not found to be proved. Claims Tribunal upon assessing income of deceased as Rs. 3000/- per month, deducting 1/3rd towards personal and living expenses and applying multiplier of 18, awarded total compensation of Rs. 4,77,000/-.

7. Mr. P.K. Tulsyan, learned counsel for appellants would submit that learned Claims Tribunal erred in assessing income of deceased as Rs. 3000/- per month only overlooking the date of accident. He submits that even if Claims Tribunal came to the conclusion that appellants failed to prove income by producing admissible piece of evidence, if deceased is to be treated as a manual labourer then also his wages could be more than Rs. 3000/- as assessed by learned Claims Tribunal. He submits that considering the date of accident, wage structure prevailing at the time of accident, price index; income of deceased ought to have been taken as Rs. 5000/- per month. Tribunal erred in awarding meagre amount

of compensation towards other conventional heads.

8. Mr. A.L. Singroul, learned counsel for Respondents 1 and 2 submits that the amount of compensation awarded by the Claims Tribunal in the facts and circumstances of the case is just and proper which does not call for any interference.

9. Notice of this case was sent to Responent 3 by registered post but no vakalatnama is filed on their behalf. On 05.11.2020 when the case was listed for hearing, Mr. Bhavesh Acharya, Advocate who normally appears for the Insurance company appeared and submitted that he would seek instructions and took time to file vakalatnama. But till date no vakalatnama on behalf of Insurance Company has been filed. In view of the above, Court proceeded to decide the case in absence of counsel for Insurance Company.

10. This appeal is for enhancement of amount of compensation awarded by learned Claims Tribunal.

11. So far as the first ground raised by learned counsel for appellants with regard to assessment of income of deceased, learned Claims Tribunal in absence of any clinching piece of evidence in proof of income has assessed income of deceased on notional basis which is perfectly correct method. For assessing income of any person/ deceased on notional basis, factors like date of accident, age of deceased, nature of occupation, wage structure, cost of living etc. are to be kept in mind. Considering the aforementioned factors and the date of accident, ie. 20.09.2014, in my considered opinion, learned Claims Tribunal erred in assessing income of deceased as Rs. 3000/- per month only which requires to be enhanced. Considering the facts and circumstances of the case,

age and occupation of deceased, I find it appropriate to assess income of deceased as Rs. 4500/- per month. Tribunal applied deduction of 1/3rd towards personal and living expenses, in the opinion of this Cort is not correct, Hon'ble Supreme Court in the case of ***Sarla Verma & others v. Delhi Transport Corp. & anr*** reported in **(2009) 6 SCC 121** held that there will be deduction of 50% towards personal and living expenses where deceased was unmarried. In the case at hand, deceased was 19 years old unmarried person, hence, deduction towards personal and living expenses shall be 50%. Award of compensation towards future prospects and on other conventional heads is also considered and decided by Hon'ble Supreme Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680** and ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in ***(2018) 18 SCC 130.*** Compensation on other heads to be awarded as held by Hon'ble Supreme Court in aforementioned rulings

12. For the foregoing reasons, amount of compensation to be awarded to claimants/ appellants requires re-computation which is as under.

13. Income of deceased is assessed as Rs. 4500/- per month ie. Rs. 54,000/- p.a. Upon adding 40% of the established income towards future prospects as held by Hon’ble Supreme Court in case of **Pranay_Sethi (supra)**, total annual income will come to Rs. 75,600/-. Upon deducting ½ towards personal and living expenses as deceased was unmarried person, loss of dependency will come to Rs. 37,800/-. By applying multiplier of 18 to annual loss of dependency, total loss of dependency will come

to Rs. 6,80,400/- [Rs.37800x18]. Besides loss of dependency, claimants/ appellants are further be entitled for Rs. 40,000/- towards loss of filial consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses.

14. Now, appellants-claimants shall be entitled for total sum of **Rs. 7,50,400/-** [Rs.6,80,400+ Rs.40,000+ Rs.15,000+ Rs.15,000] instead of Rs. 4,77,000/- as compensation. Aforesaid amount of total compensation shall carry interest @ 9% p.a. from the date of filing of claim application till its realization. The liability to satisfy the amount of compensation will be upon non-applicants 1 to 3 jointly and severally. Other conditions of the award shall remain intact.

15. Resultantly, appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan