

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 1589 of 2015

1. Smt. Sahnaj Bano W/o Late Rahmat, Aged About 28 Years
 2. Jayad Khan S/o Late Rahmat Khan, Aged About 5 Years
 3. Taimul Khan S/o Mohammad Khan, Aged About 60 Years
- Appellant No.2, is a minor and presented this appeal through her mother Sahnaj Bano, R/o Sarva Mangla, Barampur, Police Station Kushmunda, Tahsil Katghora, District Korba Chhattisgarh.

---- Appellants

Versus

1. Parshu Ram Sharma S/o Bharat Ram Sharma, Aged About 49 Years R/o Tulsi Nagar, Jhopdipara, Korba, District Korba Chhattisgarh.
2. Abhay Kumar Sharma S/o Mithlesh Sharma, Aged About 43 Years R/o 15 Block Korba, District Korba Chhattisgarh.
3. Bajaj Alliance Insurance Company Limited Through Branch Manager, Office Shivmohan Bhawan, Vidhansabha Road, Pandri, Raipur, District Raipur Chhattisgarh.

---- Respondents

For Appellants	: Shri Dashrath Kushwaha, Advocate
For Respondents	: None

Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

15.09.2021

1. Appellants/claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 23.07.2014 passed by Additional Motor Accident Claims Tribunal, Katghora, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.73 of 2009 whereby learned Claims Tribunal allowed application for grant of compensation filed under Section 166 of the M.V. Act in part and awarded total sum of Rs.5,42,000/- as compensation in a fatal accident case.
2. Brief facts for disposal of this appeal are that, on 26.07.2009, in afternoon, Rahmat Khan was travelling on his motorcycle bearing No.CG-12/G/2147 from Sarvamangla Nagar, Barampur to Bhaisma.

While so, when he reached near Railway Crossing, one Mini Bus bearing No.CG-12/ZA/0169 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the motorcycle of Rahmat Khan and caused accident. In the said accident, Rahmat Khan died on spot.

3. Appellants/claimants who are widow, child and age old father of deceased Rahmat Khan filed an application under Section 166 of M.V. Act pleading therein that on the date of accident, deceased was running business of Grocery and Betel Shop, earning Rs.14,500/- per month, claimants were dependent upon income of deceased and claimed compensation of Rs.69,13,000/-.
4. Non-applicants No. 1 and 2, who are driver and owner of offending vehicle submitted reply to claim application, denying the facts pleaded therein. They have denied the fact of accident also. It was further pleaded that offending vehicle was insured with non-applicant No.3, 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, resisting the claim. It was further pleaded that on the date of accident, there was no valid permit with offending vehicle, non-applicant No.1 was not possessed with valid and effective driving licence, as such, there was breach of policy conditions, hence, Insurance Company is not liable to indemnify the insured. It was also pleaded that deceased met with an accident on account of his own negligence.

6. On appreciation of pleadings and evidence brought on record by the respective parties, learned Claims Tribunal held that Late Rahmat Khan 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; while assessing income of deceased as Rs.4,000/- per month, calculated the amount of compensation and awarded Rs.5,42,000/-.
7. Shri Dashrath Kushwaha, learned counsel for the appellants/claimants would submit that learned Claims Tribunal erred in awarding meagre sum of compensation. He further submits that learned Claims Tribunal assessed income of deceased as Rs.4,000/- per month, which is on lower side. It is contended that learned Claims Tribunal has not awarded any compensation towards future prospects, awarded only Rs.30,000/- on other conventional heads. It is contended that appellants/claimants be awarded suitable amount of compensation in the facts and circumstances of the case. He places reliance on the judgments passed by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, **National Insurance Co. Ltd. v. Pranay Sethi** 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** to buttress his submission.

8. None appeared on behalf of respondent No.3/Insurance Company even when case is taken up for hearing in second round.
9. I have heard learned counsel for the appellants/claimants and perused the record of claim case carefully.
10. So far as the submission of learned counsel for the appellants with regard to assessment of income of deceased on the date of accident is concerned, perusal of record would show that date of accident was of 26.07.2009. Claimants in their claim application have pleaded income of deceased as Rs.14,500/- per month from Grocery and Betel Shop, but have not placed on record any documentary or admissible piece of evidence except pleadings and oral evidence of appellant No.1 Smt. Shahnaj Bano (AW-1). Surendra Kumar Yadav resident of Sarvamangla Nagar, Barampur, aged about 22 years was examined as AW-3. In affidavit filed under Order XVIII Rule 4 of CPC, he stated that he is engaged in work of driving. He used to purchase food-grains (*ration*) from the shop of deceased Rahmat Khan and also visits occasionally in Betel Shop of deceased. In cross-examination, he admitted that in examination-in-chief i.e. affidavit filed under Order XVIII Rule 4 of CPC, he has not mentioned that, in which place, Grocery and Betel Shop of deceased was situated and since when, it was running. No documentary evidence is placed on record of purchase and sale of goods, licence under shop and establishment, income tax return to prove income of deceased from the business. In absence of any admissible piece of evidence with respect to occupation and income of deceased, his income is to be

assessed on notional basis. Learned Claims Tribunal in paragraph-11 of impugned award considered the evidence available on record as well as facts and circumstances of the case and assessed income of deceased as Rs.4,000/- per month. Notional income is to be assessed considering the nature of occupation, date of accident, price index, wage structure, age of deceased/victim, cost of living etc.

11. In view of aforementioned facts and circumstances of the case, in the considered opinion of this Court, income of deceased as assessed by learned Claims Tribunal cannot be said to be on lower side. Income of deceased as Rs.4,000/- per month as assessed by learned Claims Tribunal is hereby upheld.
12. So far as the award of compensation towards future prospects is concerned, Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** and **Pranay Sethi** (supra) considered the award of future prospects. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that if victim/deceased is below 40 years of age and not in permanent employment, then there shall be addition of 40% of established income towards future prospects. In the case at hand, age of deceased was pleaded as 34 years, but in postmortem report (Ex.P/9), age of deceased is mentioned as 35 years. Learned Claims Tribunal reckoned the age of deceased as 35 years, hence, in the opinion of this Court, there shall be an addition of 40% of established income towards future prospects for computing total income of deceased on the date of accident. It is ordered accordingly.

13. Learned Claims Tribunal awarded only Rs.30,000/- on other conventional heads. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) 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 for each head as Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. Types of 'consortium' is 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, appellant will be entitled for the compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.
14. For the aforementioned reasons and discussions, amount of compensation awarded by learned Claims Tribunal to the claimants requires re-consideration and re-computation, which is as under :

Income of deceased is reckoned as Rs.4,000/- per month i.e. Rs.48,000/- per annum. Upon adding 40% of the income towards future prospects, total annual income of deceased will come to Rs. 67,200/- ($48,000 \times 40\% = 19,200$ and $48,000 + 19,200$). There shall be deduction of $\frac{1}{3}^{\text{rd}}$ towards personal and living expenses, which makes annual loss of dependency of claimants to Rs.44,800/- ($67,200 / 3 = 22,400$ and $67,200 - 22,400$). By applying multiplier of

16 to annual loss of dependency, total loss of dependency will come to Rs.7,16,800/- (44,800 x 16). Besides, compensation towards loss of dependency, appellants/claimants will be further entitle 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 funeral expenses.

15. Now, appellants/claimants are entitled for total compensation of Rs.8,66,800/- (7,16,800 + 40,000 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.5,42,000/- as awarded by learned Tribunal. Aforementioned amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Liability to satisfy the amount of compensation shall be upon non-applicants/respondents jointly and severally. Other conditions of award shall remain intact.
16. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
Judge