

Court No. - 19**Case :-** FIRST APPEAL FROM ORDER No. - 673 of 2013**Appellant :-** Smt. Kanchan Mishra And 4 Others**Respondent :-** Dinesh Chandra Tiwari And Others**Counsel for Appellant :-** Ram Kumar,Rajesh Pandey**Counsel for Respondent :-** Abhay Kumar,Mahesh Kr Yadav

Hon'ble Jaspreet Singh,J.

1. Heard Shri Ram Kumar Srivastava, learned counsel for the appellants and Shri Abhay Kumar, learned counsel for the respondent Insurance Company.
2. The instant appeal has been preferred by the claimants-appellants assailing the award dated 07.09.2012 whereby in Claim Petition No.62/2011, the Tribunal has awarded a sum of Rs.4,20,500/- along with 6% interest in favour of the claimants-appellants.
3. The submission of the learned counsel for the appellants is that the Tribunal while awarding the same has not taken note of the future prospect of the deceased and inadequate amount has been awarded towards conventional heads including the consortium and even the rate of interest is on much lower side.
4. Per contra, learned counsel for the Insurance Company submits that the deceased was doing a pathological training course and was not earning. However, the Tribunal has taken the income of the deceased at Rs.3,000/- per month.
5. It is further urged that the age of the deceased was about 30 years and considering the family background, the Tribunal has also awarded a sum of Rs.5,000/- towards funeral expenses, Rs.5,000/- towards consortium and

Rs.2500/- towards loss of estate and as such total compensation of Rs.4,20,500/- along with 6% interest is just and proper and does not require any interference.

6. The Court has heard learned counsel for the parties and from the perusal of the record, it reveals that on 17.02.2011 at around 08:30 AM, Shivji Mishra who had boarded the Mini Bus bearing UP-43-T-0912 while going to Gonda as the said bus reached Raigarh Bazaar Near Chandpur, Unique Academy, the driver of the vehicle in question while overtaking turned turtle, as a result, Shivji Mishra, who was travelling in the said bus expired.

7. It is in this context that claim petition bearing No.62/2011 was filed by his wife, two minor children and parents. The claim petition came to be contested and the respondents took the plea that the accident did not occur by rash and negligent driving of its driver. The Insurance Company also took a plea that unless and until it is established that the vehicle was being plied in accordance with the policy conditions, it may not indemnify the award.

8. Upon exchange of the pleadings, the Tribunal framed five issues and after considering the oral and the documentary evidence, it recorded a clear finding that the Mini Bus bearing UP-43-T-0912 was being driving rashly and negligently which caused the accident, as a result, Shivji Mishra expired.

9. The Tribunal also found that the driver had a valid licence and the bus was also properly insured. Thereafter, the Tribunal went ahead to

calculate the compensation and awarded a sum of Rs.4,20,500/- with 6% interest by means of the award dated 07.09.2012 which is under challenge before this Court.

10. Having considered the learned counsel for the parties and on perusal of the material on record, this Court finds that insofar as the factum of the accident, involvement of the offending Mini Bus as well as its driver having a valid licence and that the bus was insured, these findings are not under attack as no cross appeal or cross objection have been filed. Thus, these findings are affirmed.

11. The only issue which needs to be considered by this Court as to whether the appellant is entitled to enhancement of the award or the amount as granted by the Tribunal is just and proper.

12. In light of the aforesaid and noticing the dictum of the Apex Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121** and **National Insurance Company Ltd. v. Pranay Sethi and others, (2017) 16 SCC Page 680**, this Court finds that while computing the compensation and noticing the fact that the deceased was doing a course of pathological training and also working part time and considering this aspect, the Tribunal has taken the notional income of Rs.3,000/- per month. However, this Court finds that the Tribunal has not noticed that the claimants would be entitled to compensation which also would have to be calculated by factoring the amount for future prospect and noticing the decision of the Apex Court in **Magma General Insurance Company Ltd., v. Nanu Ram, 2018 SCC OnLine SC 1546**, the claimants-appellants would also be entitled to consortium and other conventional

benefits.

13. In view of the aforesaid, apparently, the amount as awarded by the Tribunal is on the lower side and taking note of the aforesaid decisions, this Court re-determine the compensation as under:-

Income	= Rs.3,000/- per month
Add: Future Prospect @ 40%	= Rs.1,200/- per month
Net Income:	= Rs.4,200/- per month
Income after deduction of 1/4	= Rs.3,150/-
Age	= 31
Multiplier	= 16
Thus compensation payable	= Rs.3150 x 12 x 16 = 6,04,800/-
Add: Filial consortium	= Rs.40,000/-
Add: Spouse consortium	= Rs.40,000/-
Add: Parental consortium	= Rs.40,000/-
Add: Loss of Estate	= Rs.15,000/-
Add: Funeral expenses	= Rs.15,000/-

Thus, total compensation payable shall be	= Rs.7,54,800/-

14. In light of the aforesaid, this Court is of the clear opinion that the claimants-appellants is entitled to a total sum of Rs.7,54,800/-. Any amount paid by the Insurance Company shall be deducted from the aforesaid sum. The amount as re-determined by the Court shall also carry interest @ 6% as awarded by the Tribunal.

15. Subject to the aforesaid modification in the quantum, the award dated 07.09.2012 passed in Claim Petition No.62/2011 shall stand modified to the above extent. Any amount which is payable and outstanding shall be paid within 60 days from today.

16. There shall be no order as to costs. The record of the Tribunal shall be remitted expeditiously.

Order Date :- 23.11.2023
Rakesh/-