

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.648 of 2012

=====

1. Sahdeo Yadav S/O Rupendra Yadav Resident Of Village- Kermine Tola Beldar
Bigha, P.S- Amas, Distt- Gaya.

2. Malti Devi W/O Sahdeo Yadav Resident Of Village- Kermine Tola Beldar
Bigha, P.S- Amas, Distt- Gaya.

.... Appellant/s

Versus

1. The Cholamandalam, M/S Central Insurance Company Through Its Manager
Legal Chhabildess Tower Floor, 6a, Middleton Street, Kolkatta- 71.

2. Rahil Hussain And Md Ashif S/O Maqsood Hussain And Mushaid Hussain
Resident Of Alipur Bhikan Mainather The Billari, Muradabad, P.S-Muradabad,
District- Muradabad U.P- 241001

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. SHAILENDRA KUMAR, Adv.

For the Respondent/s : Mr. R.C.Narayan, Adv.

Mr.Durgesh Kumar Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-12-2015

Heard counsel for the appellant and counsel for the respondents.

In the present case, the appellant is challenging the order to the limited extent for enhancement of the amount which has been ordered to be given to the appellant vide judgment and award dated 30.06.2012 passed in Motor Accident Claim Case No. 28 of 2011.

Short facts of the case is that the victim was unmarried son was dashed at GT Road by truck bearing registration No. UP 21 AN / 1527 on account of rash and negligent driving which led to institution of Criminal Case U/s 279 304A of the Indian Penal Code as well as the appellant filed the present claim case seeking compensation amount. The limited grievance has been raised by the appellant is with respect to application of the wrong multiplier, compensation for future prospect has not been taken into consideration, the court below has taken



the age of the claimant, not of the victim as well as the interest should have been granted from the date of filing of the application, in stead of the award. Further claim has been made that the victim was engaged as a cleaner of truck, was getting Rs. 3,000/- per month, apart from Rs. 50/- per day as daily allowance. The counsel for the appellant submits that the Court below has not taken daily allowance for computation which the appellant was receiving. So far this point is concerned though the employer has been examined but admittedly he has not produced any document to show that he was paying Rs. 50/- per day as daily allowance to the victim. In such view of the matter, the contention for payment of Rs. 50/- per day to the victim is not accepted and the same is rejected.

So far the question which age will be taken into consideration, i.e. the age of the claimant or the age of the victim reliance has been placed on Munna Lal Jain and another v. Vipin Kumar Sharma and others reported in (2015)6 SCC 347 where the Hon'ble Supreme Court has held that the age of the victim will be taken into consideration and not the age of the claimant as it will create dispute, will lead to anomalous situation. It is relevant to quote paragraph No. 11 of the judgment:

Para-11:- The remaining question is only on multiplier. The high Court following Santosh Devi, has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependents or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as

that of dependents is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote ;(Reshma kumari case, SCC p. 88, para 36)

“36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death deceased; (b) income of the deceased; and (c) the number of dependents. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma.”

The Hon'ble Supreme Court has provided the method of taking multiplier in Sarla Verma v. DTC (2009)6 SCC 121 and basing on that case, '18' will be correct multiplier in the present case. in stead of '15'. So far as the Court below has not granted any relief under the head 'future prospect', in view of Rajesh Vs. Rajvir Singh reported in (2012)9 SCC 54, even the person who is self employed will also be entitled to compensation for future prospect. As the age of the victim was below 18 years, so 50 per cent of the amount will be added in the compensation amount.

The Court below is directed to recalculate amount of compensation

from the date of the order, the interest will be calculated from the date filing of the application.

Accordingly, judgment and award dated 30.06.2012 is modified to the aforesaid extent. The Court below is directed to re-calculate the amount and the Insurance Company is directed to pay the difference amount within three months from the date of revision of the award.

With this direction, this appeal is allowed.

Office is directed to remit back the lower court records forthwith.

Jay/-

U			
---	--	--	--

(Shivaji Pandey, J)