NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA(C) No. 65 of 2011

1. Smt. Usha Devi, wife of late Umesh Gupta, aged about 30 years,

2. Shivam, son of Late Umesh Gupta, aged about 06 years

3. Ankit, son of Late Umesh Gupta, aged about 03 years,

   Appellants no.2 & 3 being minors represented through legal guardian mother Smt. Usha Devi

   All R/o Sargipal Para, Kondagaon, District Bastar

---- Appellants

Versus

1. Shekh Mohammed, s/o Shekh Mastan, aged about 40 years, R/o Mastanpara, Sukma at Present C.S.E.B. Colony, Dantewada, District Dantewada (South Bastar) (C.G)

2. Executive Engineer, Chhattisgarh State Electricity Board, Dantewada (South Bastar)

3. Shivcharan Dwivedi, s/o L.M. Dwivedi, R/o R.I.S. Colony, Bacheli, Distt. Dantewada (C.G).

4. National Insurance Company Limited, Jagdalpur, District Bastar (C.G)

---- Respondents

For Appellants	:	Miss Sharmila Singhai, Advocate
For Respondent No. 4	:	Mr. Goutam Khetrapal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgement/order on Board

28.07.2015

1. This is an appeal against the award dated 13.10.2010 passed in Claim Case No.14/2008 by the Additional Motor Accidents Claims Tribunal (FTC) Kondagaon, District Bastar whereby the Tribunal has awarded Rs.50,000/- under no fault compensation as against the claim of Rs.23 lakhs.

2. The claim petition was preferred by the widow and two minor children

of the deceased. It was stated that the deceased Umesh Gupta was engaged in business of cloth and used to earn Rs.8500/- per month. On the date of accident i.e., 08.6.2007, the deceased was going on his motorcycle from Kondagaon to Bijapur. At that time, near a turning of village Nelsnar, the offending Bolero Jeep bearing Regn. No. C.G. 18-D/0492 driven by non-applicant Shekh Mohmmad (respondent No.1 herein) in rash and negligent manner dashed the deceased whereby he sustained severe injuries and consequently died on the next day i.e., 09.06.2007. Respondent No.1 Sheikh Mohammad was driver of the offending vehicle whereas original non-applicant No.2, Executive Engineer, C.G. Electricity Board, Dantewada in whose possession and control the vehicle was being plied. Respondent No.3 Shivcharan Dwivedi is the original owner of the vehicle. However, admittedly the vehicle was in possession of respondent No.2 i.e., Electricity Board as the vehicle was taken on hire. The insurer of the vehicle is Respondent No.4 National Insurance Company.

3. The driver and the Officer of Electricity Board in whose possession the vehicle was being plied contended that the accident had happened due to own fault of the deceased. It was further contended that at the time of accident, the deceased was not holding any valid licence. Further it was contended that the liability if any is awarded, then the Insurance Company/respondent No.4, with whom the vehicle was insured, would be liable to make good the same.

4. The original non-applicant No.3 Shiv Charan Dwivedi refuted the averments of the claim petition, however, contended that at the relevant time, the vehicle was given on hire to the Executive Engineer, Electricity Board and he was not in possession of the vehicle. The Insurance Company contended that on the date of accident, the owner of Bolero Jeep was not having any valid licence/permit to drive the vehicle and the vehicle was plied in breach

of terms of insurance policy. Consequently, the Insurance Company cannot be held liable.

5. The Tribunal after evaluating the facts and evidence passed an award of Rs.50,000/- by holding that since the claimants could not prove the licence held by the deceased, it will be presumed that he was liable for the contributory negligence of the accident. It was further held that the claimants have failed to produce any eye witness so as to satisfy the ingredients of Section 166 of the MVA. The Tribunal, however, held that the Insurance Company could not prove the fact that at the relevant time, the vehicle was driven in breach of terms of policy as the driver of the Bolero vehicle namely Sheikh Mohmmad was having valid driving licence. Consequently, the Insurance Company was directed to make good the payment. The instant appeal is by the claimants.

6. Miss Sharmila Singhai, learned counsel appearing on behalf of the appellants would submit that the issue of licence has been settled at rest since on an application filed in the appeal under order 41 Rule 27 of CPC, the copy of the license of deceased was placed. It is further contended that on such application, the direction was issued to the Insurance Company to verify the said document i.e., licence. It is contended that the said licence having been verified, the Insurance Company has filed its report to the fact that a valid licence was held by deceased Umesh Prasad at the time when the accident took place. Consequently, the issues with respect to the licence do not call for any further debate before this Court and it is accordingly held that on the date of accident, the deceased was holding a valid and effective licence to drive the motorcycle.

7. Now turning to the question of accident, the claimant has stated that her husband went by motorcycle and thereafter the accident happened. The document of FIR is marked as Ex.P-1 in respect of

the accident. The FIR would show that it was lodged by one Rakesh Gupta and Sheikh Mohmad. The time of accident was shown as 17.45 hours and the report was made at 18.50 hours meaning thereby within half-an-hour of the accident, the report of accident was made. In the FIR it is written that the lodger of the FIR was also traveling on motorcycle and the deceased was also traveling on the motorcycle. When they reached near Nelsar turning, at that time, the Bolero Jeep C.G. 18-D/0492 driven by Shekh Mohmmad rashly and negligently dashed the motorcycle thereby the injury was sustained.

8. Non-applicant No.2 has examined one N.W. Henri who was working as Executive Engineer in Chhattisgarh State Power Distribution Company Ltd. N.W. Henri in examination-in-chief has stated that the driver of the motorcycle was not having a valid licencse and the motorcycle was being driven in rash and negligent manner and the rare wheel of the motor cycle slipped whereby the motorcycle forcibly dashed against a bolero jeep. The FIR Ex.D-4 was made by N.W. Henri on 13.08.2007. In the FIR it is stated that when they reached near a turn, the motorcyclist after hearing the voice of horn of the car, could not control himself and applied sudden brake thereby the motorcycle was slipped and consequently it dashed against the jeep. Similar statements have been made by Sheikh Mohmmad.

9. By reading of the statements of non-applicants, one thing can be ascertained from the fact that the collision had taken place and the Bolero Jeep was involved in such accident. In the evidence, non-applicants have stated that the place of accident was near a turn. Therefore, necessarily it can be inferred that when the heavy vehicle which reached near a turning, it should have also controlled its speed. The FIR is exhibited by claimants vide Ex.P-2 and the facts of accident are also corroborated by the statements of non-applicants. Since the accident had happened near a turning, therefore, one thing can be presumed that the driver of the motorcycle, the deceased as

also the driver of offending Jeep both were responsible so as to attribute the accident. Since the Jeep which is driven by non-applicant No.1 is much heavier than the two wheelers i.e., Motorcycle which met with accident at a turning point where the negligence is found in driving both the vehicles, then it is obvious that the contributory negligence cannot be to the extent of 50% as the facts and evidence which are adduced by the non-applicants would go to show that they were also responsible for the accident. Consequently in the given facts of this case, it is held that the deceased was also liable for the accident to the extent of 40% towards contributory negligence.

10. Now coming to the question of quantum of compensation, the learned Tribunal has awarded a total compensation of sum of Rs.50,000/- under no fault compensation/liability. The claimants in their petition have stated that the deceased was dealing in clothe business and thereby used to earn Rs.8500/- per month. In the affidavit, the claimants have stated that her husband used to earn Rs.8500/-. However, considering the fact and the nature of business in order to give a finding of notional income, reference is made u/s 163-A of MVA. For the sake of brevity, section 163-A is reproduced herein below:

> "163-A. Special Provisions as to payment of compenstion on structured formula basis.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motorvehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
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> xxx xxx xxx
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> (2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time, amend the Second Schedule."

11. As per the Schedule appended to sub-section (3) of section 163-A, the notional income in the year 1994 was shown as Rs.15,000/-. As the Central Government has failed to amend the second schedule as provided in sub-section 3 of Section 163-A of the Act, the Courts/Tribunals can take judicial notice of of increae in the prices of essential commodities and the cost of living during the period between the introduction of the Second Schedule in the year 1994 and the date of accident in the given case.

12. Reverting to the present case, the accident in this case had taken place in the year 2007. Therefore, if the hike in price of essential commodities and cost of living between the period 1994 and 2007 are taken into consideration and further taking into the minimum wages which was payable to a labour was ranging between Rs.150 and 200/- in the year 2007, in the opinion of this Court, the notional income would certainly come to Rs.4500/- per month.

13. A perusal of the award would show that the Tribunal has not added any future prospects. Taking into fact that the deceased was self employed and was aged about 35 years at the time of accident as per the postmortem report vide Ex.P-8, applying the principles laid down in ***Rajesh and others Vs. Rajbir Singh & others (2013) 9 SCC 54***, further there would be a an addition of Rs.50% to such income towards future prospects. Thus the total income comes to Rs.6750/- (4500 plus 2250) per month or Rs.81,000/- per annum.

14. Now coming to the deduction towards personal and living expenses, the claim petition was preferred by wife and two minor children i.e., total 3 claimants, being dependents of deceased, therefore, applying the principles laid down in ***Sarla Verma Vs. Delhi Transport Corporation, 2009 6 SCC 121*** 1/3rd would be deducted. Thus the

annual dependency comes to Rs.54,000/- (81000 -27000). The age of the deceased as has been shown in the postmortem report was 35 years, therefore, the deceased belonged to the age group of 31-35 years and as per multiplier table given in *Sarla Verma's case* multiplier 16 would be applicable, Therefore, the total dependency is worked out to Rs.8,64,000 (54000 x 16).

15. The Tribunal has not awarded any sum under conventional heads. Taking into the age of deceased and that of wife and following the principles laid down in ***2015 AIR SCW 3577 Asha Verman & others V. Maharaj Singh & others,*** another amount of Rs.1,00,000/- is awarded for the loss of consortium to the wife. Further, Rs.1,00,000/- for loss of love and affection, care and guidance etc., towards minor children; Rs.50,000/- for loss of estate and Rs.25,000/- for funeral expenses are also awarded. Thus, the compensation to be reassessed as follows:

S.No.	**Heads**	**Calculation**
(i)	Notional income Rs.4500/- per month	Rs.4500 x 12 = 54,000/-
(ii)	50% of (I) above to be added as future prospects	(Rs.54,000 + 27,000 = Rs.81,000/-
(iv)	1/3rd of (ii) deducted as personal expenses of the deceased	Rs. = 81,000 – 27,000 = Rs. 54,000/-
(iv)	Compensation after multiplier of 16 is applied	Rs. 54,000 x 16 = Rs. 8,64,000/-
(v)	Loss of consortium to the wife	Rs. 1,00,000/-
(v)	Loss of estate	Rs. 50,000/-
(vi)	Loss of Love and affection, care and guidance towards minor children	Rs. 1,00,000/-
(vii)	Funeral expenses	Rs. 25,000/-
	Total	Rs.11,39,000/-

16. Thus the total compensation would come to Rs.11,39,000/-. Since it

has been held that the deceased was also liable for contributory negligence to the extent of 40%, out of the said amount, 60% would be payable, which would come to **Rs.6,83,400/-**. After deducting Rs.50,000/- already awarded by the Tribunal, the compensation will be 6,33,400/-. Further, interest @ 9% per annum is awarded on the total compensation from the date of filing of the claim petition till the date of realization in view of the decision of the Supreme Court in ***Asha Verman & others V. Maharaj Singh & others (supra)***.

17. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 6,33,400/- in addition to what is already awarded. No order as to costs.

18. The Registry is further directed to communicate the claimants in writing the "amount of award enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language.

Sd/-
GOUTAM BHADURI
JUDGE

Rao