HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 426 of 2011

1. Jeera Bai, widow of late Laxmanram, aged about 40 years, occupation house wife,

2. Jagjeevan Ram S/o Late Laxmanram, Minor aged about 17 years (Minor) occupation-student

through natural guardian Mother (Appellant No. 1) Smt. Jeera Bai, Wd/o Late Laxmanram.

Both Uraon by caste, R/o Near Kharsianaka, Harijanpara, Agrasen Ward No. 34, Ambikapur, Dist. Sarguja

---- Appellants

Versus

1. Jitendra Srivastav, aged about 40 years, S/o Late Keshav Prasad Srivastav, occupation-agriculturist, R/o Vill. Podipa, PO Sakhauli, Tah. Ambikapur, Distt. Sarguja (CG).

2. Brij Ekka, aged about 28 years, occupation – Driver, R/o Laxmipur, P.S. And Tah. Ambikapur, Dist. Sarguja (CG)

3. The Oriental Insurance Co. Ltd. Through The Branch Manager, Oriental Insurance Co. Ambedkar Chowk, P.S. And Tah. Ambikapur, Dist. Sarguja

---- Respondents

And

MAC No. 474 Of 2011

1. Jitendra Shrivastava, S/o Late Keshav Prasad Shrivastava, aged about 40 years, occupation-agriculturist, R/o Podipa, P/o - Sakholi, Tehsil Ambikapur, Distt. Surguja, C.G.

2. Brij Ekka, S/o Baijnath Ekka, Aged about 28 years, Occupation Vehicle Driver R/o Laxmipur, P.S. & Tehsil Ambikapur, Dist. Surguja C.G.

---- Appellants

Vs

1. Jeera Bai, W/o Late Laxman Ram, Aged about 40 years, Occupation-Housewife

2. Jagjivan Ram, S/o Late Laxman Ram, Aged about 17 years, Occupation-Student Minor Through Natural Guardian & Mother Appellant No.1 Jeerabai, W/o-Late Laxman Ram

Both are caste-Uraon, R/o- Near Kharsia Naka, Harijanpara, Agrasen Ward No.34, Ambikapur, Distt. Surguja, C.G.

3. The Oriental Insurance Company Limited Through Branch Manager, Oriental Insurance Company, Ambedkar Chowk, P.S. &Tehsil Ambikapur, Dist. Surguja, C.G.

---- Respondents

In MAC No. 426/2011
For appellants – Shri Vivek Bhakta, Advocate.
For Respondents No.1 and 2 – Shri Goutam Khetrapal and Shri Jitendra

Shrivastava, Advocate.
For Respondent No.3 – Shri Sudhir Agrawal, counsel for respondent No.3.
In MAC No. 474/2011
For appellants – Shri Goutam Khetrapal and Shri Jitendra Shrivastava, Advocate.
For respondents No.1 and 2 – Shri S.D. Singh, Advocate.
For respondent No.3 – Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

18/08/2015

1. Both these appeals are arising out of award dated 16/12/2010 passed in claim case No.50/2006 by the court of Third Additional Motor Accident Claims Tribunal, Sarguja (Ambikapur). The MAC No.426/2011 is by the claimants whereas MAC No.474/2011 is by the owner and driver of the offending vehicle. The claimants have preferred the appeal for enhancement of the claim whereas owner has preferred the appeal on the ground that liability has been fastened over the owner wrongfully. Therefore, both these appeals.

2. Brief facts which give rise to these cases are that on 7/09/2006 deceased Laxman Ram was going on his tricycle to sell the vegetables at Godri Market, when he reached near a place known as Kharsia Naka vehicle tractor bearing No. C.G.15-A-0901 and trolley bearing No. C.G. 15-A-0902 being driven by original non-applicant No.2 Brij Ekka in a rash and negligent manner dashed the deceased Laxman Ram whereby he sustained severe injuries on his head. Subsequently, he succumbed to the injuries. It was stated that deceased used to discharge agricultural job and also by sale of vegetables he used to earn Rs.3000/- per month. Consequently, on the different heads widow and the minor son has filed the claim petition before this court. Non-applicant No.1 owner and non-applicant No.2 driver of the vehicle refuted the averments of the claim petition and stated that no accident had occurred by the offending tractor and trolley and therefore claimants are not entitled for any compensation.

The insurance company non-applicant No.3 contended that vehicle was insured from 8/09/2006 to 7/09/2007 and on the date of accident i.e. on 7/09/2006 vehicle was not insured. On the basis of the pleading and the evidence of the parties, the learned tribunal has awarded amount of Rs.3,24,000/- which is subject of appeal by both the claimants as also by the owner and driver. Tribunal further held that on the date of accident vehicle was not insured.

3. First primary question which is raised by the owner of the vehicle is that on the date of accident proposal was accepted and the time of accident being at 12.30 pm and the policy having been accepted at 12:15 pm it would be a contract of policy being a special contract. He placed his reliance in case law reported in **AIR 1997 SC 2147**, **1997 AIR (SCW) 4228**, **1999 AIR (SCW) 3586** and would submit that in this instant case proposal was accepted prior to the accident and therefore the insurance company cannot absolve of its liability.

4. Per contra, learned counsel for the insurance company would submit that according to the document placed by the appellant/owner accident had happened much prior to acceptance of the proposal i.e at about 10:20. Consequently, in any case, it cannot be stated that at the relevant time of accident vehicle was insured. He further submits that even proposal form was for 8/09/2006 to 7/09/2007, therefore the acceptance of the policy was for a future period and the award passed by the tribunal is well merited which do not call for any interference.

5. Learned counsel appearing on behalf of the claimants would submit that just compensation has not been awarded and therefore it should be enhanced and he further submits that multiplier has wrongly been applied, consequently the court below has failed to grant just compensation.

6. I have heard learned counsel for the parties at length, perused the

documents.

7. First question which falls for consideration raised by the owner of the vehicle that whether at the relevant time vehicle was under cover of insurance. In order to find out the same, documents and the evidence placed on record is perused. The FIR in this case has been proved as Ex.P-1 which shows that time of accident was 7/09/2006 at about 12.20. Likewise merg intimation Ex.P-2 also shows that time of the accident was 12.20 pm on 7/09/2006. This fact is not in dispute that date of accident is 7/09/2006. Therefore, relevant question is as to whether at the time of accident the vehicle was insured or not? Proposal form which is proved by the insurance company is Ex.D-1. It shows that proposal was received for insurance of the said offending vehicle by the company on 7/09/2006 at about 12:15. This has been proved by DW-1 Sharad Thakkar. It is stated that said proposal was presented in the office on 7/09/2006 at 12:15 pm. Ex.D-1 also contains an endorsement in back. The endorsement shows that the physical verification of the vehicle was made at about 12.05 pm by the officer of the insurance. Owner of the vehicle in his statement has disowned the happening of the accident itself. He has stated that no accident had happened by the vehicle on 7/09/2006. Ex.D-1 also contains the signature of Jitendra Shrivastava owner which contains the time of inspection of vehicle. This Ex.D-1 is not been disputed. Further it shows that proposal was placed at 12:15 pm meaning thereby according to the document which is on record vehicle was in physical present before the insurance officer at 12.05 pm. In this context if documents of the claimants are perused. Ex.P-7 shows which is bed head ticket of Laxman Ram, it shows that he was admitted to the hospital at about 10.20 am for an accident happened at 9.15.

8. Therefore, evaluating the evidence of FIR and merg wherein time of

the accident is shown 12.20 as against the Ex.P-7 which is bed head ticket which shows time of accident at 9.15. Further reading it along with document Ex.D-1 which shows presence of the tractor at the insurance office from 12.05 goes to show and proves the fact the accident had happened at 9.15 as per Ex.P-7. Consequently, in view of the statement made by the owner that no accident had happened by the tractor cannot be sustained rather which goes to prove that when proposal for insurance was given the accident had already happened with his tractor. Consequently, law has been laid down by the Hon'ble Supreme Court in **1997 AIR (SCW) 4228, 1999 AIR (SCW) 3586** and by application of such principle since specific time of submission of policy was mentioned in Ex.D-1 the special contract came into being and the policy became effective from time mentioned in the cover note. In a result it would show that it was for a future period from 8/09/2006 to 7/09/2007 and was accepted after the accident had happened. Consequently, finding of the court below that at the relevant time vehicle was not insured is affirmed and the appeal filed by the owner and driver fails having no merit.

9. Now coming to the quantum of compensation. Perusal of the award would show that the tribunal has assessed income of the deceased to Rs.3000 per month. In the claim petition claimants have stated at para 6 that income of the deceased was Rs.3000 per month. Therefore, in view of such statement in claim petition it cannot be stated that notional income which is arrived by the tribunal is wrong. Under these circumstances, in view of the pleading of the claimants themselves notional income of Rs.3000/- cannot be stated to be wrong. So, it is held that notional income of Rs.3000/- as has been arrived by the tribunal is correct in view of the statement of claimants themselves. Perusal of the award would show that tribunal has not added any sum towards future prospect. Here in this instant case age of the deceased appears to be of 45 years according to

the post mortem report Ex.P-6. Therefore, considering the fact that deceased was aged about 45 years at the time of accident, there would be further addition of 30% as future prospect as per principle laid down in case of **Rajesh and others Vs. Rajbir Singh and others, (2013) 9 SCC 54** over and above income of Rs.36,000/-. Thereby, income would come to Rs.36,000/- + 10,800 = Rs.46,800/-.

10. Now coming to the deduction towards personal expenses. Claim petition was preferred by widow and the minor son, therefore following the principles laid down in case of **Sarla Verma Vs. DTC (2009) 6 SCC 121** there would be deduction of 1/3 i.e. Rs.15600/- towards personal expenses of the deceased. After deduction of Rs.15600/- from Rs.46800/- dependency comes to Rs.31,200/-. Since age of the deceased was shown to be 45 years as such multiplier of 14 would be applicable and after applying multiplier of 14 amount comes to Rs.4,36,800/- Thus, total dependency comes to Rs.4,36,800/-.

11. Under the conventional head tribunal has awarded Rs.2000/- for funeral expenses, Rs.10,000/- for loss of consortium and loss of love and affection. In the opinion of this court, the amount under the conventional head also needs to be re-assessed in view of the law laid down in **Asha Verman Vs. Maharaj Singh and others,** reported in **2015 AIR SCW 3577.** Therefore for loss of consortium to wife amount is enhanced to Rs.1 lakh and Rs.50,000/- for loss of love and affection to the child. Further for loss of estate another amount of Rs.25,000/- is awarded and amount granted of Rs.2000/- for funeral expenses is enhanced to Rs.25,000/-. Thus the total compensation to be reassessed is as follows:-

S.No.	Heads	Calculation
(i)	Notional income @ Rs.3000/- per month	Rs.36,000/- per annum
(ii)	30% of (i) to be added as	Rs.36,000+10,800= Rs.46,800/-

	future prospects	
(iii)	One third of (ii) deducted as personal expenses of the deceased	Rs.46,800- 15600 = Rs.31,200/-
(iv)	Compensation after multiplier of 14 is applied	Rs.31,200 x 14 = Rs.4,36,800/-
(v)	For loss of consortium to the wife	Rs.1,00,000/-
(vi)	For loss of love and affection to the child	Rs.50,000/-
(vii)	For loss of estate	Rs.25,000/-
(viii)	For funeral expenses	Rs.25,000/-
	Total	Rs.6,36,800/-

12. Thus, the total compensation will be Rs.6,36,800/-. After deducting Rs.3,24,000/- awarded by the tribunal, the enhancement would be Rs.3,12 ,800/-.

13. In a result, appeal **MAC No.426/2011** filed by the claimants is partly allowed. The claimants will be entitled to the said sum of Rs. 3,12 ,800/- in addition to what is already awarded with interest at the rate of 7.5% per annum from the date of enhancement of the award and appeal **MAC No. 474/2011** filed by the owner and driver of the offending vehicle is dismissed. No order as to costs.

14. The Registry is further directed to communicate the claimants in writing the "amount of award enhanced in appeal **MAC No.426/2011** as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language.

Sd/-

(Goutam Bhaduri)

JUDGE

Gouri