

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 80 of 2013**

1. Umashankar Dubey aged about 56 years son of Late Shiv Balak Dubey
occupation Agriculturist
2. Smt. Gauri Dubey aged about 57 years wife of Shri Umashankar Dubey
occupation Housewife
3. Ku. Sudha Dubey aged about 22 years daughter of Shri Umashankar
Dubey occupation Student
4. Ramakant Dubey aged about 20 years son of Shri Umashankar Dubey
occupation Student
5. Vidyasagar aged about 17 years son of Shri Umashankar Dubey
occupation Student

Appellant No.5 Minor through his natural guardian father Shri
Umashankar Dubey

All are Bramhan by caste, resident of Village Putputra, Post Lahpatra,
Police Station and Tahsil Lakhanpur, District Surguja (CG)

---- Appellants**Versus**

1. Radhika Bus Travels, through Proprietor- Jamunadhar Upadhyay, S/o
Shri Narayan Prasad Upadhyay, R/o Ward No. 33, Mayapur, P.S.
Ambikapur, Distt. Surguja (C.G.)
2. Raja Nagesh, aged about 26 Years, S/o Shri Mohan Ram Nageshiya,
occupation Driver, resident of Village Batwahi, P.S. Lundra, Distt. Surguja
(C.G.)
3. Bajaj Allianz General Insurance Company Ltd. Through Branch Manager,
Shivmohan Bhawan, Vidhan Sabha Road, Pandari, Raipur, Distt. Raipur
(C.G.)
4. Smt. Ambeshwari Dubey widow of Late Kamalakant @ Ashok Dubey
daughter of Jagdish Prasad Dubey aged about 22 Years R/o village
Bartikala, P.S. Wadrafanagar, Distt. Surguja (C.G.) (Presently working as
Nurse in the Department of Medical)

---- Respondents

For Appellants
For Respondent No.3

:
:

Shri Vivek Bhakta, Advocate
Shri Bhaskar Payashi, Advocate

For Respondent No.4	:	Shri Jitendra Shrivastava, Adv.
For Respondents No.1 and 2	:	None

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09/07/2015

1. Challenge in this appeal is to the award dated 28-9-2012 passed by the Motor Accidents Claims Tribunal, Surguja (Ambikapur) in Claim Case No.76/2008 whereby a total award of Rs.5,25,000/- has been passed in favour of the claimants/appellants and respondent No.4. The appeal is preferred by the father, mother, sister and two brothers of the deceased wherein wife of the deceased, namely, Ambeshwari Dubey has been arrayed as respondent No.4.

2. Brief facts of the case are that Kamalakant alias Ashok Dubey was working as a Security Guard at Niraja Security and Detective Chamber, Bangalore and was married to Ambeshwari Dubey three months before the date of accident which took place on 24-7-2008. It was stated that on 24-7-2008, the deceased had gone for sale of Pan-Masala on his Hero Honda Motorcycle bearing registration No.CG 15 CC 5681 and was coming back to his house at Lakhanpur (Ambikapur). At that time, a bus bearing registration No.CG 15 A 3509, owned by respondent No.1 Radhika Bus Travels and being driven by respondent No.2 Raja Nagesh at a high speed in rash and negligent manner, dashed the motorcycle of the deceased. As a result of the accident, the driver of the motorcycle Kamalakant alias Ashok Dubey sustained grievous injuries and died on the spot. It was stated that apart from the job of Security Guard in the Security and Detective Chamber, the deceased used to do business of sale of Pan-Masala and he was earning total Rs.15,000/- per month from

his job of Security Guard, sale of Pan-Masala and agriculture. It was further pleaded by the father, mother, sister and two brothers of the deceased that after the death of the deceased, the wife of the deceased used to stay at her maternal house, therefore, she may not be granted any compensation and there is every chance of her remarrying.

3. Respondents No.1 and 2, the owner and the driver of the offending bus, in their reply, denied the accident and stated that the accident did not take place with the bus bearing registration No.CG 15 A 3509, owned by respondent No.1 and being driven by respondent No.2. They stated that the deceased died because of the accident caused by some other vehicle. It was further stated that the bus was insured with respondent No.3 Bajaj Allianz General Insurance Company Limited and consequently, compensation, if any, is to be paid by the insurance company.
4. The insurance company, in its reply, stated that the deceased died due to his own negligence and at the time of accident the deceased did not have any valid driving licence. The other averments of the claim petition were also denied by the insurance company.
5. The wife of the deceased, namely, Smt. Ambeshwari Dubey, arrayed as non-applicant No.4 in the claim petition, separately filed her written statement and contended that the claimants were not dependent on the deceased and she being the wife was completely dependent on the deceased. It was further contended that the deceased was working as a Security Guard and apart from this he also used to sell Pan-Masala. It was further contended that after death of her husband Kamalakant, because of the behaviour meted out by the appellants to her, she was constrained to leave her in-laws' house and used to stay at her maternal

house. Therefore, entire compensation should be awarded to her.

6. The Tribunal, after evaluating the facts and evidence, passed the award and held that at the relevant time, the offending bus bearing registration No.CG 15 A 3509 owned by respondent No.1 was being driven by respondent No.2 in rash and negligent manner and, consequently, the accident happened. Therefore, it was held that because of the rash and negligent driving of the offending bus by its driver the accident occurred which resulted into death of Kamalakant alias Ashok Dubey. There is no appeal by the owner and the driver of the offending bus and in absence of challenge to the said finding, the same is affirmed.
7. Shri Vivek Bhakta, learned counsel appearing for the appellants submits that the Tribunal has failed to take into account the income of the deceased and future prospects has also not been awarded. He further submits that the deceased was working as a Security Guard and was getting a salary of Rs.6,000/- per month. Therefore, the evidence which was adduced that the deceased was earning Rs.15,000/- per month was not exorbitant and it should have been accepted. He, therefore, submits that the Tribunal has failed to award just compensation. Consequently, he prays for reassessment of the award.
8. Shri Bhaskar Payashi, learned counsel appearing for respondent No.3/insurance company vehemently opposes the arguments advanced by learned counsel for the appellants. He submits that the award is well merited. He further submits that it is being projected that the deceased used to work as Security Guard, sell Pan-Masala and was also engaged in agricultural work. This shows that the deceased used to work for whole 24 hours which is not practical. Consequently, the income of the

deceased as assessed by the Tribunal is on the higher side and the impugned award does not require any interference.

9. Shri Jitendra Shrivastava, learned counsel appearing for respondent No.4/wife of the deceased supports the arguments advanced by learned counsel for the appellants. However, it is contended by him that the wife, being dependent of the deceased, be awarded the entire compensation.
10. I have heard learned counsel appearing for the parties and perused the material available on record.
11. The only question which falls for consideration is about the quantum of compensation.
12. Claimant/appellant Umashankar Dubey, the father of the deceased has stated that his son/the deceased was working as a Security Guard at Niraja Security and Detective Chamber, Bangalore and every month he used to visit different places and was paid Rs.6,000/- per month apart from the daily allowances. It is further stated that apart from the job of the Security Guard, the deceased was engaged in business of sale of Pan-Masala and thereby he was earning Rs.3,000/- per month as an average and with agricultural income, the deceased's total monthly average income was Rs.15,000/-. The claimants/appellants, to prove the income of the deceased, has placed two documents, i.e., Ex.P-10 and P-11 on record. Ex.P-10 is an Identity Card of Niraja Security and Detective Chamber, Bangalore wherein the rank of the deceased is shown as Security Guard. Ex.P-11 is an extract of Pay-Slip of Niraja Security and Detective Chamber, Bangalore which shows that an amount of Rs.6,000/- per month was being paid as salary to the deceased.

13. The Tribunal has not accepted these two documents and disbelieved the same on the ground that Ex.P-11 has not been proved by calling author of the document. The father of the deceased has stated that name of his son Kamalakant Dubey alias Ashok Dubey is mentioned in Ex.P-10, i.e., the Identity Card of the Niraja Security and Detective Chamber. The Tribunal has assessed the notional income of the deceased as Rs.3,600/- per month. Even if the document Ex.P-11 which shows the income of the deceased as Rs.6,000/- per month is ignored and the oral evidence is considered, it does not amount that the income asserted by the claimants is shown to be exorbitant and not practical to accept. In a case of compensation when the document of income as placed and the source of such document has not been disputed by the insurance company in the cross-examination seriously, then, in such case, it would be accepted that in absence of proof by author of the document, the same cannot be completely sidelined. Even if such monthly income is taken to be reduced, in any case, when the wages of a labour was ranging in the year 2008 from Rs.100 to Rs.150, then, in such case, the income cannot be stated to be less than Rs.4,500/- per month, i.e., Rs.150/- per day. Furthermore, taking into consideration the statement of the father of the deceased along with the document Ex.P-11, it appears to be honest and *bona fide* statement has been made by the claimant thereby even ignoring the document of Ex.P-11, the income of the deceased, in the opinion of this Court, cannot be reduced from Rs.4,500/- per month.
14. Now, having assessed the income of the deceased to be Rs.4,500/- per month, the compensation is re-assessed further.
15. Perusal of the award would show that the Tribunal has not considered the future prospects. Therefore, the principle laid down in **Rajesh and others**

v. Rajbir Singh and others, (2013) 9 SCC 54 applies to the instant case.

The deceased was, as per the post mortem report (Ex.P-3), aged about 23 years and was, as averred, a self-employed and a person with fixed wages, therefore, in order to compute for future prospects, 50% of the monthly income of the deceased, which comes to Rs.2,250/-, is further added in his monthly income of Rs.4,500/-. Therefore, the actual monthly income of the deceased is assessed as Rs.6,750/- thereby yearly income comes to Rs.81,000/-. The claim petition was filed by five persons and the wife of the deceased was also arrayed as respondent No.4 and according to the statement of the father of the deceased everybody were dependent on the deceased. Consequently, there are total six claimants. Therefore, there would be a deduction of 1/4th towards personal expenses of the deceased. So, the dependency of the six claimants comes to Rs.60,750/-. The age of the deceased was 23 years, as such multiplier of 18 would be applicable. Thus, the total loss of annual dependency for all the six claimants including the wife comes to Rs.10,93,500/-.

16. Furthermore, the Tribunal has granted an amount of Rs.5,000/- for the loss of consortium to the wife which also requires reconsideration. Considering the age of the deceased and the wife, the same is enhanced from Rs.5,000/- to Rs.1,00,000/-. For loss of love and affection to the claimants Umashankar Dubey, the father, Gouri Dubey, the mother, Sudha Dubey, the sister, Ramakant Dubey, brother and Vidyasagar Dubey, brother, the same is, considering the numbers of the claimants, enhanced from Rs.25,000/- to Rs.1,00,000/-. Likewise, the funeral expenses is enhanced from Rs.5,000/- to Rs.15,000/-. Hence, the compensation reassessed by this Court is as under:

Sl. No.	Head	Amount (Rs.)
1	Loss of Annual Dependency for all the six claimants including the wife	10,93,500
2	Loss of Consortium for Wife	1,00,000
3	Loss of Love and Affection for Father, Mother, Sister and two Brothers @ Rs.20,000/- each	1,00,000
4	Funeral Expenses for all the six claimants @ Rs.2,500/- each	15,000
Total=		13,08,500

17. Considering the age of the sister and two brothers of the deceased, it is directed that out of the total amount of loss of annual dependency of Rs.10,93,500/-, amount of Rs.50,000/- each shall be paid to them. Out of remaining sum of (Rs.10,93,500 – Rs.1,50,000 =) Rs.9,43,500/-, a total amount of Rs.4,00,000/- shall be paid to the father and the mother of the deceased towards the loss of annual dependency and the remaining amount of Rs.5,43,500/- shall be paid to the wife of the deceased towards the loss of annual dependency. Hence, the distribution of the amount of compensation granted by this Court to all the six claimants including the wife shall be as under:

Loss of Annual Dependency		
1	Umashankar Dubey and Gouri Dubey, father and mother of the deceased	4,00,000
2	Sudha Dubey, Ramakant Dubey and Vidyasagar Dubey, sister and two brothers of the deceased @ Rs.50,000/- each	1,50,000
3	Ambeshwari Dubey, wife of the deceased	5,43,500
Loss of Consortium		
	Ambeshwari Dubey, wife of the deceased	1,00,000
Loss of Love and Affection		
	Umashankar Dubey, Gouri Dubey, Sudha Dubey, Ramakant Dubey and Vidyasagar Dubey, father, mother, sister and two brothers of the deceased @ Rs.20,000/- each	1,00,000
Funeral Expenses		

	Umashankar Dubey, Gouri Dubey, Sudha Dubey, Ramakant Dubey and Vidyasagar Dubey, father, mother, sister and two brothers of the deceased and Ambeshwari Dubey, wife of the deceased @ Rs.2,500/- each	15,000
Total=		13,08,500

18. The total amount of compensation of Rs.13,08,500/- granted by this Court shall carry simple interest @ 9% per annum from the date of filing the claim petition before the Tribunal till realisation of the full compensation. Rest of the impugned award shall remain unchanged. The appeal is allowed to the extent indicated above. No order as to costs.

Sd/-
(Goutam Bhaduri)
JUDGE