NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 195 of 2014

1. Smt. Kunti Baghel, Wd/o. Sukhchand Baghel, Aged about 21 years,
2. Miss Kavita Baghel, D/o. Late Sukhchand Baghel, Aged about 6 months,
3. Smt. Lachhani Baghel, W/o. Late Nadaram Baghel, Aged about 60 years,
4. Miss Satyawati Baghel, D/o. Late Sukhchand Baghel, Aged about 19 years,

   Appellant No.2 is Minor, Through natural guardian, mother Smt. Kunti Baghel,

   All are R/o. Padaipara Village Lamker, Post- Lamker, P.S. Bhanpuri, Distt. Bastar C.G.

----Appellants

Versus

1. Bablu Kumar Dubey, S/o. Rajkishore Dubey, Aged about 22 years, R/o. Parpanaka Dongaripara, Jagdalpur, Distt. Bastar (C.G.).
2. Vivekanand Jha, S/o. Shriram Shankar Jha, Laxmi General Store, Azad Chowk, Jagdalpur, Distt. Bastar (C.G.).
3. The Branch Manager, Shriram General Insurance Co. Ltd., E-8 Riko Industrial Area, Seetapura Jaipur, Post- Jaipur (Rajasthan).

---- Respondents

For Appellants	:	Mr. P.K. Tulsyan, Advocate.
For Respondent No.1 & 2	:	Mr. A.L. Singraul, Advocate.
For Respondent No.3.	:	Mr. Deepak Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

04/08/2015

1. Challenge in this appeal is to the award dated 30.07.2013, passed in Claim Case No.64/2012, by the Additional Motor Accident Claims Tribunal (F.T.C.), Bastar at Jagdalpur, District Bastar whereby as against the claim made for Rs.12,50,000/-, an award of Rs.4,69,000/- was passed.

2. The appeal is by the claimants.

3. Briefly stated facts of the case is that a claim petition was filed by the wife, minor daughter, grand-mother and sister of the deceased Sukhchand Baghel with an averment that on 01.12.2010, the Somaru Ram Kashyap was going on his vehicle Hero Puch alongwith his friend Sukhchand Baghel from village – Chapka to village Lamker. When they reached near a place known as Kakadi Ghat Dhaba, a truck coming from Jagdalpur bearing No. C.G.-17H-0566, driven in rash and negligent manner by the respondent No.1, dashed Sukhchand Baghel and his friend Somaru Kashyap, due to which Sukhchand Baghel sustained severe injuries and died on the spot. The report was made by one Bhursuram Kashyap and after the said report, dead body of the deceased was sent for postmortem. It was stated that at the time of accident, the deceased was aged about 22 years and was earning Rs.5,000/- per month as he used to do the job of carpenter. It is further stated that the claimants were dependent on the deceased and on account of

death of Sukhchand Baghel on road accident under different heads, claim of Rs.12,50,000/- was made.

4. The non-applicant No.1 & 2, the owner an the driver of the offending vehicle contended that death of Sukhchand Baghel did not happen by the offending vehicle truck. It was further contended that at the time of accident, the vehicle was being driven in moderate speed and the non-applicant No.1, the driver of the truck was having valid driving licence to drive the vehicle. It was further contended that the vehicle was insured with the non-applicant No.3, Shriram General Insurance Company, therefore, the insurance company is liable to make good the compensation.

5. The non-applicant No.3, the insurance company contended that at the time of the accident, the driver of the offending vehicle did not have valid driving license and therefore, breach of policy was committed. Consequently, the insurance company is not liable to make good the compensation.

6. The learned Claims Tribunal after evaluating the entire evidence on record came to a conclusion that at the relevant time, the offending vehicle was driven in rash and negligent manner and it was responsible to cause accident. There is no challenge to such finding by the respondents and in absence of challenge to the same, the finding arrived at by the learned Tribunal are affirmed.

7. The learned counsel for the appellants would submit that in this case, the assessment of the income has not been correctly made

and just compensation has not been awarded by the learned Claims Tribunal. He would further submit that according to the statement, the deceased was working as Carpenter, therefore, necessarily the amount of Rs.5,000/- to Rs.6,000/- as was stated should have been accepted as income of the deceased. He would further submit that on conventional head, a very meager amount of Rs.10,000/- was awarded. He would further submit that the multiplier has also not been properly applied, and just compensation has not been awarded by the learned Claims Tribunal, therefore, he prays for suitable enhancement.

8. Per contra, learned counsel appearing on behalf of the respondent No.3 would submit that the award is well merited which do not call for any interference as no proof of income has been proved.

9. Perusal of the statement of the claimant/wife, Smt. Kunti Baghel would show that the deceased, Sukhchand Baghel died on the accident. On a suggestion made to her that the deceased was not earning Rs.5,000/- per month, has been denied. She has stated that her husband was working as Carpenter and was also agriculturist and used to earn Rs.5,000/- to Rs.6,000/- per month, whereby the family used to survive. The Tribunal has assessed the income of the deceased to Rs.3,000/- per month. Admittedly, no document has been filed to show the income of the deceased. The Court can not lost sight of the fact that the deceased and the claimants belonged unorganized sector of the society, therefore, it would not proper to hold that in absence of any document income can not be proved. The wife of the deceased has stated that the deceased was earning

Rs.5000 to 6000/- per month as a Carpenter and on suggestion given to negate such fact, she did not succumbed those suggestion in the cross-examination.

10. In absence of any document, in order to ascertain the notional income, if the provisions of Second Schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicle Act are looked into, it has fixed the notional income to the extent of Rs.15,000/- in the year 1994. As the Central Government has failed to amend the Second Schedule as provided in Sub-section (3) of the Section 163-A of the Motor Vehicle Act, the Courts/Tribunal can take judicial notice of increase 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.

11. This fact also can not be ignored that the accident in this case has taken place in the year 2010, therefore, if the payment of the labour are being taken into account as it has been stated that the deceased was working as a Carpenter, therefore, taking the amount of wages of a skilled labour, certainly, which was ranging in between Rs.150/- to 200/- per day alongwith notional income as appeared to the date of accident, the notional income in the opinion of this Court would certainly come to Rs.4,000/- per month i.e. Rs.48,000/- per annum.

12. Here in the instant case, the age of the deceased appears to be of 22 years as would be evident from postmortem report, Ex.P/7.

Considering the fact that the deceased was aged about 22 years at the time of the accident, there would be further addition of 50% as future prospects as per the law laid down in case of ***Rajesh & Others Vs. Rajbir Singh & Others*** reported in ***(2013) 9 SCC 54,*** over and above the income of Rs.48,000/- and thereby the 50% of amount comes to Rs.24,000/- and total income comes to Rs.72,000/-.

13. Now coming to the deduction towards personal expenses, the claim petition was preferred by the four persons i.e. the wife, daughter, grand-mother and sister of the deceased. As per the principles laid down in case of ***Sarla Verma V. D.T.C. (2009) 6 SCC 121,*** if the number of dependent family members is 4 to 6, the deduction towards personal expenses should be 1/4th, therefore, after deducting ¼ towards personal expenses, the annual dependency comes to Rs.54,000/- (72,000 minus 18,000/-). The deceased was aged about 22 years, as has been shown in the postmortem report, Ex.P/7, therefore, multiplier 18 would be applicable in this case. Thus the total dependency comes to Rs.9,72,000/- (Rs.54,000 x 18).

14. Further, under other heads, the Tribunal has only awarded Rs.5,000/- towards loss of consortium and Rs.5,000/- for funeral expenses, which appears to be very meager. Further no amount has been awarded for loss of love and affection to the children and the grand-mother and sister. Taking into the age of the wife and children, following the law laid down in case of ***Asha Verman Vs. Maharaj Singh and Ors., reported in 2015 AIR SCW 3577,***

Rs.1,00,000/- is granted for loss of consortium to the wife. Further Rs.50,000/- towards loss of love and affection, care and guidance etc. to the child and Rs.50,000/- for loss of love and affection to the grand-mother and sister are also awarded. The amount of Rs.5,000/- granted for funeral expenses is enhanced to Rs.25,000/-. Thus the total compensation to be reassessed is as follows :-

S.No	**Heads**	**Calculation**
(i)	Loss of dependency	Rs.9,72,000.00
(ii)	For loss of consortium	Rs.1,00,000.00
(iii)	For loss of love and affection to the child	Rs. 50,000.00
(iv)	For loss of love and affection to the grand-mother & sister	Rs. 50,000.00
(v)	For funeral expenses	Rs. 25,000.00
	Grand Total	**Rs. 11,97,000.00**

15. Thus the total compensation is recomputed as Rs.11,97,000/-. After deducting Rs.4,69,000/- as awarded by the Tribunal, the enhancement would be Rs.7,28,000/-.

16. In the result, the appeal is allowed. The appellants will be entitled to the said sum of Rs.7,28,000/- in addition to what is already awarded by the Claims Tribunal.

17. Now coming to the interest, the Supreme Court in ***Asha Verman & others V. Maharaj Singh & others (supra)*** held in para 19 that the High Court has erred in awarding an interest at the rate of 8% per annum only, instead of 9% per annum on the compensation amount as per the principles laid down in case of ***Municipal Corporation of Delhi V. Association of Victims of Uphaar Tragedy (2011) 14 SCC***

481 : AIR 2012 SC 100. Therefore, in the instant case, interest @ 9% per annum is awarded on the compensation amount from the date of filing of the application till the date of payment. The claimants are entitled to receive the said compensation from the Insurance Company.

18. So far as it relates to apportionment, out of total dependency of Rs.9,72,000/-, the grand-mother and sister of deceased namely Smt. Lachhani Baghel, appellant No.3 and Miss. Satyawati Baghel, appellant No.4 will get Rs.1,50,000/- - Rs.1,50,000/- each plus Rs.50,000/- granted towards loss of love and affection. Therefore, total amount of Rs.3,50,000/- would be disbursed to grand-mother and sister. Further Rs.2,00,000/- shall be deposited in the name of appellant No.2, the daughter of the deceased in the form of fixed deposit in any Nationalised Bank for a period of 5 years. The remaining amount shall be disbursed to the widow of deceased, the appellant No.1.

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

20. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Balram