NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 27 of 2015

1. Smt. Ranjeeta Manjhi, W/o Late Laxman Manjhi, Aged About 30 years
2. Abhishek Manjhi, S/o Late Laxman Manjhi, Aged About 6 Years
3. Rit Manjhi, D/o. Late Laxman Manjhi, Aged About 6 Years,
4. Ashish Manjhi, S/o Late Laxman Manjhi, Aged About 6 Years,

   No.2 to 4, Minors, Through - Mother Smt. Ranjeeta Manjhi, W/o. Late Laxman Manjhi, all Caste- Dhakad,

   All are R/o Village- Bourpadar, Biradongaripara, Post- Kachnaar, Tah. Bakawand, Distt. Bastar C.G., Civil and Revenue District Bastar (C.G.)

---- Appellants

Versus

1. Dinesh Thakur, S/o. Late Hridayanand Thakur, Aged About 42 Years, R/o Sarvodaya Nagar, Pachmedhi Naka, Raipur, Distt. Bastar C.G.
2. Preetam Singh Garcha, S/o Jogendra Singh Garcha, R/o Gandhi Nagar Udhyaan, Civil Lines, Raipur C.G.
3. Branch Manager, The New India Insu.Co.Ltd., Office- First Floor, Madina Building, Kachchari Chowk, Raipur C.G.

---- Respondents

For Appellants	:	Mr. Vikash Shrivastava, Advocate.
For Respondent No.1 & 2	:	None present.
For Respondent No.3.	:	Mr. Raj Awasthi, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

12/08/2015

1. Challenge in this appeal is to the award dated 30.09.2014, passed in Claim Case No.82/2013, by the Motor Accident Claims Tribunal, Bastar at Jagdalpur, whereby as against the claim made for Rs.27,02,000/-, an award of Rs.4,30,000/- was passed.

2. The appeal is by the claimants.

3. Briefly stated facts of the case are that on 07.10.2012, the deceased, Laxman Manji was going on his motor cycle bearing No.C.G.17-K-/2907 to discharge his job as Paster and was traveling from village B.M.Semla, P.S. Kondega, District Navrangpur to Bade Bendri, District Kondagaon. At that time, near a place in between Bhanpuri and Farsaguda, a bus bearing No.C.G.-19-F-9099, driven by the original non-applicant No.1, Dinesh Thakur, in a rash and negligent manner dashed the deceased, Laxman Manji from behind as a result of which, he sustained severe injuries and subsequently died. It was pleaded that at the time of the accident, the deceased was aged about 30 to 34 years. It was further stated that the deceased used to discharge the job of Paster and also doing the work of tailoring whereby he was earning Rs.12,000/- per month and the claimants were dependent upon him. Consequently under different heads, an amount of Rs.27,02,000/- was claimed for.

4. The driver of the bus remained ex-parte. The original non-applicant No.2, the owner of the offending vehicle contended that the said vehicle bearing No..C.G.-19-F-9099 was insured with the non-applicant No.3, the New India Insurance Company Limited and the driver of the vehicle was holding valid driving license, consequently, if any compensation is awarded, it is to be made good by the insurance company.

5. The insurance company in its reply submitted that at the relevant time of the accident, the driver of the offending vehicle was not holding valid driving license. Further it was stated that bus was

being plied on route for which it was not holding any permit, therefore, it would amount to breach of conditions of insurance policy and the insurance company can not be held 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. Learned counsel for the appellants would submit that the Tribunal has wrongly assessed the income of the deceased to Rs.3,000/- per month. He would submit that even the minimum wages are taken into account, it would be more than Rs.3,000/-. He would further submit that the evidence is on record that apart from the tailoring, the deceased was doing the job of Paster, consequently, the income which was stated of Rs.12,000/- by wife would be reasonable. He further submits that considering the number of claimants, it would be extremely difficult to hold the income of the deceased to Rs.3,000/- and it is not possible to maintain four persons, if the assessment of Rs.3,000/- is taken into consideration. He would further submit that the learned Claims Tribunal has not added any amount towards future prospects over the income of the deceased. He would further submits that on the conventional head, meager compensation has been awarded, which needs suitable enhancement.

8. Per contra, learned counsel appearing on behalf of the insurance company supported the award. It is contended that since there is no evidence on record to accept the oral statement about the income of the deceased, therefore, assessment of income to Rs.3,000/- per month is well merited, which do not call for any interference.

9. I have heard the learned counsel for the parties at length, perused the documents and the evidence on record.

10. The only question which falls for consideration in this appeal is the quantum of compensation. It is a trite law that in case of compensation in absence of any claim, the Court can award just compensation. Therefore, the evidence and the facts are examined in the light of the principles laid down by the Hon'ble Supreme Court. The wife of the deceased, namely Ranjita Manjhi in this case has been examined as AW-1. This witness has stated that her husband used to do the job of Paster in a Church and further more apart from such avocation, he used to do the job of tailoring thereby earning Rs.12,000/- per month. In the cross-examination, further came with the statement that as a Paster, her husband used to earn Rs.6,000/- and part from that by doing the job of tailor, he used to earn Rs.6,000 to Rs.7,000/-. No documentary evidence has been placed to support the same. Similar statement is made by Karan Jubali (A.W.-2) which affirms the fact that the deceased was working as Paster in Church and apart from Paster, he used to do the job of tailoring. In cross-examination of this witness, however, it was stated that job of Paster was done only on Sunday. Admittedly, in this case, no document was placed on record in support of the income.

11. In order to arrive at a notional income, if the provisions of Second Schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicles 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 Section 163-A of the Motor Vehicles 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.

12. Perusal of the statement of the claimants would show that the deceased belonged to unorganized sector, therefore, it would be difficult to expect that the income would have been documented and it could have been proved by any other factum except making oral statement. The statement of the witnesses affirms the fact that the deceased was discharging the job of tailor and definitely in such case, it would amount to skilled job. The accident in this case has taken place in the year 2012, therefore, taking into account the wages of skilled labour which was ranging from Rs. 150 to 200 in the relevant time and reverting to the present case, as the accident has happened in the year 2012, considering the increase in price of essential commodities during the period from 1994 to 2012, as also taking into the fact the wages which was prevailing for the skilled labour according to the second schedule, in the opinion of this Court, the notional income of Rs.4,500/- per month would be proper in the facts and circumstances of the case. Consequently, the

notional income of the deceased is assessed to Rs.4,500/- and thereby the annual income comes to Rs.54,000/-.

13. Reading of the award would show that the Tribunal has not added any sum towards future prospects. Here in the instant case, the age of the deceased are assessed as 34 years as would be evident from postmortem report, Ex.P/4. Considering the fact that the deceased was aged about 34 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,*** and ***Munna Lal Jain & Another Vs. Vipin Kumar Sharma and Ors,*** reported in ***(2015) 6 SCC 347*** over and above the income of Rs.54,000/- and thereby the 50% of amount comes to Rs.27,000/- and total income comes to Rs.81,000/-.

14. Now coming to the deduction towards personal expenses, the claim petition was preferred by four persons and 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 $1/4^{th}$, therefore, after deducting ¼ towards personal expenses, the annual dependency comes to Rs.60,750/- (81,000 minus 20,250/-). The deceased was aged about 34 years, as has been shown in the postmortem report, Ex.P/4, therefore, multiplier 16 would be applicable in this case. Thus the total dependency comes to Rs.9,72,000/- (Rs.60,750 x 16).

15. Under conventional head, the Claims Tribunal has awarded Rs.5,000/- to the wife for loss of consortium and for love and

affection to the children Rs.5,000/- each and Rs.2,000/- for funeral expenses. In the opinion of this Court, the amounts under conventional heads also need to be reassessed in view of law laid down in case of ***Asha Verman Vs. Maharaj Singh and Ors., reported in 2015 AIR SCW 3577.*** Therefore, I am inclined to award Rs.1,00,000/- for loss of consortium to the wife. For loss of love and affection to the children Rs.50,000/- is awarded to each, thereby Rs.1,50,000/- is awarded for love and affection to the minor children. The amount of Rs.2,000/- 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 minor children	Rs. 1,50,000.00
(vi)	For funeral expenses	Rs. 25,000.00
	Grand Total	**Rs.12,47,000.00**

16. Thus the total compensation is recomputed as Rs.12,47,000/-. After deducting Rs.4,30,000/- as awarded by the Tribunal, the enhancement would be Rs.8,17,000/-.

17. In the result, the appeal is allowed in part. The appellants will be entitled to the said sum of Rs.8,17,000/- in addition to what is already awarded by the Claims Tribunal.

18. 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.

19. So far as it relates to apportionment, out of total dependency of Rs.9,72,000/-, the children of the i.e. appellant No.2 to 4 will get Rs.2,000,000/- each plus Rs.50,000/- Rs.50,000/- granted towards loss of love and affection i.e., total Rs.2,50,000/- each which shall be deposited in the name of appellant No. 2 to 4 in the form of fixed deposit in any Nationalised Bank for a period of 3 years. The remaining amount shall be disbursed to the widow of deceased, the appellant No.1.

20. 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.

21. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Balram