NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 543 of 2014

1. Smt. Yewati Bai Jurri, wife of Late Mahesh Kumar Jurri Aged About 25 Years R/o Khairkheda, P.S. and Tah. Charama, Distt. Uttar Bastar Kanker C.G.

2. Kumari Leena, daughter of Late Mahesh Kumar Jurri, aged about 4 Years Minor, Thru- Mother Smt. Yewati Bai Jurri, R/o Khairkheda, P.S. and Tah. Charama, Distt. Uttar Bastar Kanker C.G.

3. Kumari Bhumika D/o Late Mahesh Kumar Jurri, aged About 2 Years Minor, Thru- Mother Smt. Yewati Bai Jurri, R/o Khairkheda, P.S. and Tah. Charama, Distt. Uttar Bastar Kanker C.G.

4. Brijlal Jurri S/o Patiram, aged about 54 Years R/o Khairkheda, P.S. and Tah. Charama, Distt. Uttar Bastar Kanker C.G.

5. Smt. Pankin Bai, wife of Brijlal, aged about 50 Years R/o Khairkheda, P.S. &Tah. Charama, Distt. Uttar Bastar Kanker C.G.

---- Appellants

Versus

1. T. Satish Kumar & Ors. S/o T. Krishnarai aged about 25 Years, resident of Jaipur, Siyarpeta, P.S. Korapur, City Kotwali (Orrisa)

2. Gorle Vijya Kumari, wife of Chandrashekhar R/o D. No. 50-46 Seloor, Municipality Seloor, Distt. Vijyanagar (Andhra Pradesh)

3. Shri Ram General Insurance Company Ltd. Thru- Branch Office, Gidam Road, Jagdalpur, Tah. And Distt. Bastar C.G.

---- Respondents

For the Appellant	:	Mr. R.N. Jha, Advocate.
For Respondent No.3	:	Mr. S.S. Rajput and Ms. Renu Singh, Advocates.

Hon'ble Shri Justice Goutam Bhaduri

Judgment/Order on Board

21.08.2015

1. This is an appeal by the claimants against the award dated 11th April, 2014 passed by the Motor Accidents Claims Tribunal, Uttar Bastar, Kanker, in Claim Case No.106 of 2012.

2. Briefly stated facts of the case are that a claim case was filed by the

widow, two minor children and mother and father of the deceased namely Mahesh Kumar Jurri on the averments that on 12.08.2012, the deceased was going to his home village Khairkheda from Kanker on his motorcycle bearing Regn. No.19-BA/6293. The accident took place at 10 o' clock in the night. It was pleaded that while he was going, a truck bearing Regn. No. M.P. 35-V/9265 was negligently parked on the main road at Govindpur without there being any parking indicator light. Consequently, the deceased dashed at the back side of the said Truck and sustained grievous injuries. While the deceased was taken to the Hospital, he died on the way. At the time of accident, the age of deceased was 30 years and was working as Supervisor in Crusher Plant whereby he was earning Rs.6000/- per month. Therefore, on different heads, an amount of Rs.33,30,000/- was claimed for the death of deceased.

3. The driver and owner of the vehicle remained exparte. The Insurance Company contended that the accident did not take place on account of negligence of non-applicant No.1 and the deceased was himself responsible for the accident. It was further stated that at the time of accident, the driver of truck was not having valid and effective driving license and the truck was being used in contravention of the registration conditions. Further, it was stated that because of breach of conditions of insurance policy, the Insurance Company is not liable to make good the payment.

4. The Tribunal after evaluating the facts and evidence on record has passed an award of Rs.3,14,250/-. The said order is under challenge by the claimant seeking enhancement.

5. Shri R.N. Jha, learned counsel appearing on behalf of the claimant would submit that the Tribunal without any evidence on record has inferred the contributory negligence. He would submit that the time of accident is important as it was at 10 o' in the night and the accident

happened due to wrong parking of the vehicle on the main road which would amount to accident arose out of use of motor-vehicle . It is also contended that the Tribunal has failed to award just compensation. He submits that the deduction towards personal expenses has also been wrongly made by the Tribunal as the claim petition was filed by 5 persons being dependents of deceased and the multiplier has also wrongly been applied. He further submits that future prospects have not been awarded and on the conventional heads, meagre amounts have been awarded which need reassessment. Hence this appeal seeking enhancement of the award.

6. Per contra, Shri S. S. Rajput and Ms. Renu Singh, learned counsel appearing on behalf of the Insurance Company would submit that the award is well merited which do not call for any interference. It is contended that the deceased himself had dashed the truck at the back side of the vehicle, therefore, he could have easily noticed a stationary truck and if the deceased was not agile enough to notice the same, it would amount to contributory negligence which has been correctly held by the Tribunal. It was further submitted that the quantum of compensation has rightly been awarded which also do not call for any interference.

7. I have heard learned counsel for the parties and have also perused the documents on record.

8. Wife Smt. Yewati Bai was examined as A.W.1. She stated that on 12.08.2012, at about 10 o' clock in the night her husband Mahesh Kumar was going to his home village Khairkheda from Kanker on his motor cycle bearing C.G.No.19-BA/6293 and when he reached near Govindpur main road, the deceased dashed at the back side of the truck which was negligently parked on the main road itself. She stated that the truck was being parked without any indicator/parking light, therefore, the accident happened. This witness has proved the

documents of criminal case. The FIR is marked as Ex.P-2.

9. Reading of the FIR would show that the same was lodged immediately after one hour of the incident on 12.08.2008. The FIR shows that the accident happened because of the fact that the Truck was parked on the main road itself without indicator/parking light. Consequently the deceased has dashed at the back side of the Truck. The spot map marked as Ex.P-4 also shows the position of the Truck and it reflects that the Truck was parked on the middle of road itself and not on the side of the road. The averments of A.W.1 have not been diluted in cross examination.

10. The record would further show that no evidence has been adduced on behalf of the respondents driver and owner. As has been held in ***National Insurance Company Limited V. Sinitha & others, (2012) 2 SCC 356***, in case when the issue of contributory negligence is raised then the onus of proof of contributory negligence lies on the shoulder of defence (owner or insurer). Therefore, in the instant case, applying the aforesaid principle since no evidence was adduced either by the Insurance Company or the owner & driver, the presumption of contributory negligence cannot be accepted. In the result, the finding of contributory negligence of 25% on the part of deceased cannot be sustained and thereby is set aside.

11. Now coming to the quantum, the learned Tribunal has taken the monthly income of the deceased as Rs.3000/- per month. The wife has stated that her husband was working as Supervisor in the crusher plant of one Vishnu Jurri and was being paid Rs.6000/- per annum. Admittedly, in this case no document has been placed on record to prove the income.

12. In order to arrive at 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.

13. Perusal of 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. This fact also cannot be ignored that the accident in this case has taken place in the year 2012. The claimant wife has stated that the deceased was working as supervisor in crusher plant. The employer Vishnu Jurri is examined as A.W.2. He stated that the deceased was working in his crusher plant as Supervisor and an amount of Rs.6000/- per month was being paid to him. Though no document has been filed to prove the income, but considering the increase in price of essential commodities during the period from 1994 to 2012, as also taking into account the wages of skilled labour which was ranging from 200 to 250/- during the period 2012-2013, in the opinion of this Court, the notional income of Rs.4500/- per month would be proper in the facts and circumstances of the case. Consequently, the notional income of the deceased is assessed as Rs.4,500/- and thereby the annual income comes to Rs.54,000/-.

14. Perusal of the award would show that the Tribunal has not added any sum toward future prospects. Here in the instant case, the age of the deceased appears to be of 31 years as would be evident from marks sheet Ex.P-8. Considering the age of deceased, there would be further addition of 50% to the income of Rs.54,000/- towards future prospects as per the law laid down in case of ***Rajesh & others Vs.***

Rajbir Singh & others* reported in *(2013) 9 SCC 54 and thereby 50% of amount comes to Rs.27,000/- and total incomes comes to Rs.81,000/-.

15. Now coming to the deduction towards personal expenses, the claim petition was preferred by 5 persons i.e., wife and two minor children as also father and mother of deceased. Consequently, following the principles laid down in ***Sarla Verma Vs. D.T.C. (2009) 6 SCC 121***, 1/4th would be deducted. Therefore after deducting one-fourth towards personal expenses, the annual dependency comes to Rs.60,750/- (81,000 – 20,250). Since the deceased belonged to the age group of 31 to 35 years, multiplier 16 would be applicable. Thus the total dependency comes to Rs.9,72,000 (60,750 x 16).

16. Under the conventional heads, the learned Claims Tribunal has awarded Rs. 10,000/- for loss of consortium to the wife; Rs.20,000/- that is @ Rs.5000/- per head for loss of love and affection to two minor children and mother and father of deceased and Rs.5000/- for funeral expenses. In the opinion of this court, the amounts awarded under conventional heads also need to be reassessed in view of the law laid down in case of ***Asha Verman Vs. Maharaj Singh and others., reported in 2015 AIR SCW 3577***. Looking to the age of deceased and his wife, I am inclined to award Rs.1,00,000/- towards loss of consortium to the wife, Rs.50,000/- for loss of love and affection to the mother and father; Rs.1,00,000/- for loss of love and affection to the two minor children, care and guidance etc & Rs.25,000/- for loss of estate. Further, Rs.2000/- granted for funeral expenses is also enhanced to Rs.25,000/-. Thus the total compensation to be reassessed is as follows:-

S.No.	**Heads**	**Calculation**
(i)	Notional income @ Rs.4500/- per month	Rs.54,000/- per annum
(ii)	50% of (I) above to be added as future	(Rs.54000 + 27000 =

	prospects	Rs.81,000/-
(iii)	One fourth of (ii) deducted as personal expenses of the deceased	Rs. = 81000 – 20,250 = Rs. 60,750/-
(iv)	Compensation after multiplier of 16 is applied	Rs. 60,750 x 16 = Rs. **9,72,000/-**
(v)	Loss of consortium to the wife	Rs. 1,00,000/-
(vi)	Loss of love and affection to the mother and father	Rs. 50,000/-
(vii)	Loss of love and affection towards two minor children, care and guidance etc.	Rs. 1,00,000/-
(viii)	Loss of estate	Rs. 25,000/-
(ix)	Funeral expenses	Rs. 25,000/-
	Total	**Rs.12,72,000/-**

17. Thus the total compensation will be Rs.12,72,000/-. After deducting Rs. 3,14,250/- awarded by the tribunal, the enhancement would be Rs. 9,57,750/-. For the reasons stated in the foregoing paragraph, no amount shall be deducted towards contributory negligence.

18. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 9,57,750/- in addition to what is already awarded.

19. Now coming to grant of 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.

20. So far as apportionment is concerned, out of total loss of dependency i.e., Rs.9,72,000/-, the mother and father of deceased being claimants will get Rs.1,50,000/- in addition to Rs.50,000/- granted for loss of love and affection. Rs.3 lakhs each shall be deposited in the name of two minor children by way of fixed deposit in any nationalized Bank for a period of 5 years. The remaining amount shall be disbursed to the claimant wife.

21. 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