NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 216 of 2015

1. Smt. Ashwani Nayak, W/o. Santosh Nayak, Aged About 40 Years, R/o Talab Para, Koliyari, Police Station Arjuni, Tahsil and District Dhamtari, C.G.

----Appellant

Versus

1. Nupendra Kumar S/o Bednath Deshmukh, Aged About 28 Years, R/o Village Dughali, Malibori, Police Station Balod, Tahsil and District Balod C.G. Presently Residing At Bramhan Para, Dondilohara, Tahsil Dondilohara, District- Balod, C.G.

2. Prateek Jain, S/o. Late Prakash Chandra Jain, Aged About 32 Years, R/o Village Main Road, Bus Stand, Dondi Lohara, Police Station and Tahsil Dondilohara, District- Balod, C.G.

3. Iffco Tokiyo General Insurance Company Limited, Branch Office, Lal Ganga Shopping Maal, 3rd Floor, G.E. Road Raipur, C.G.

---- Respondent

For Appellant	:	Mr. Anil Gulathi, Advocate.
For Respondent No.1 & 2	:	None present.
For Respondent No.3.	:	Mr. Amrito Das, Advocate with Mr. K. Rohan, Advocate

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Hon'ble Shri Justice Goutam Bhaduri

Order On Board

20/08/2015

1. Challenge in this appeal is to the award dated 05.01.2015, passed in Claim Case No.53/2014, by the Additional Motor Accident Claims Tribunal, Dhamtari, District Dhamtari, whereby as against the claim made for Rs.31,50,000/-, an award of Rs.3,21,000/- was passed.

2. Briefly stated facts of the case are that a claim petition was preferred by the mother of the deceased namely Ku. Bharti Nayak alleging that on 25.12.2012, at about 2.40 PM, the deceased was traveling in Maruti Swift Car bearing No.C.G.-07-MA-9063 and she was coming back towards Charama to her house at Dhamtari, when they reached near a place known as Jagtara temple, the Maruti Swift car being driven by the original non-applicant No.1, Nupendra Kumar in a rash and negligent manner dashed into a electric pole, whereby Ku. Bharti Nayak sustained severe injuries and subsequently because of the injury sustained, she died. It was stated that the deceased was aged about 25 years at the time of accident and was running beauty parlor, whereby she used to earn Rs.6,000/- per month. Consequently under different heads, an amount of Rs.31,50,000/- was claimed for.

3. The non-applicant No.1 & 2 refuted the claim averments. It was contended that the vehicle was not driven in breach of terms of insurance policy at the time of the accident and the driver of the vehicle was holding valid driving license. It was further contended that the vehicle was insured with the original non-applicant No.3, Iffco Tokiyo General Insurance Company. Consequently, if any compensation is awarded, it is to be made good by the insurance company.

4. The insurance company in its reply submitted that on the date of accident, the vehicle was being used as commercial vehicle, whereas, the insurance was for private use of vehicle. It was further submitted that the driver of the vehicle was not having valid driving

license to drive the commercial vehicle, therefore, a breach of terms of policy was committed. Consequently, the insurance company can not be held liable to make good the compensation.

5. 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 dashed the electric pole, therefore, by impact of such rash and negligent driving, the accident happened. 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 Claims Tribunal are affirmed.

6. The learned Claims Tribunal has further awarded total compensation of Rs.3,21,000/-. Being aggrieved by such quantum of award, the instant appeal is filed by the claimant.

7. Learned counsel for the appellant would submit that the Tribunal has failed to grant just compensation. 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 vehemently opposes the argument and would submit that in absence of any clear evidence of income, the compensation so arrived at by the learned Claims Tribunal 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. The learned Tribunal has assessed the income of the deceased to Rs.3,000/- per month. The mother of the deceased namely Smt. Ashwani Nayak has stated that her daughter used to earn Rs.6,000/- per month by running beauty parlor. The said statement has also been corroborated by another witness Devanand Meshram. Admittedly, in this case, no document was placed on record in support of the income.

11. 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.

12. The claimant has stated that the deceased was running beauty parlor, therefore, taking into account the wages of skilled labour which was ranging from Rs. 150 to 200 during the period 2012-2013 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.4500/- per month would be proper in the facts and circumstances of the case and thereby the annual income comes to Rs.54,000/-.

13. 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 25 years as has been stated at Para-4 of the claim petition. Considering the fact that the deceased was aged about 25 years at the time of 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.54,000/- and thereby 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 filed by the mother of the deceased and further the deceased was unmarried, therefore, following the principles laid down in case of ***Sarla Verma V. D.T.C. (2009) 6 SCC 121***, 50% would be deducted towards personal expenses. Therefore after deducting 50% from the annual income towards personal expenses, the annual dependency comes to Rs.40,500/- (81,000 – 40,500). Since the deceased belonged to the age group of 21 to 25 years, according to multiplier table given in *Sarla Verma (supra)*, multiplier of 18 would be applicable. Thus the total dependency comes to Rs.7,29,000/- (40500 x 18).

15. Under the conventional heads, the learned Claims Tribunal has awarded Rs.5000/- for funeral expenses, Rs.5,000/- for loss of love and affection and Rs.5,000/- for loss of estate. In the opinion of this court, the amounts 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***. Therefore, I am inclined to award Rs.75,000/- on the head of loss of love and affection to the mother and Rs.25,000/- for loss of estate. Further, Rs.5000/- granted for funeral expenses is also enhanced to Rs.25,000/-. Thus the total compensation to be reassessed is as follows:-

S.N.	**Heads**	**Calculation**
(i)	Notional income @ Rs.4500/- per month	Rs.54,000/- per annum
(ii)	50% of (i) above to be added as future prospects	(Rs.54000 + 27000 = Rs.81,000/-
(iii)	One half of (ii) deducted as personal expenses of the deceased	Rs. = 81000 – 40,500 = Rs. 40,500/-
(iv)	Compensation after multiplier of 18 is applied	Rs. 40,500 x 18 = Rs. 7,29,000/-
(v)	Loss of love and affection to the mother	Rs. 75,000/-
(vi)	Loss of estate	Rs. 25,000/-
(vii)	Funeral expenses	Rs. 25,000/-
	Total	**Rs.8,54,000/-**

16. Thus the total compensation will be Rs.8,54,000/-. After deducting Rs.3,21,000/- awarded by the tribunal, the enhancement would be Rs. 5,33,000/-.

17. In the result, the appeal is partly allowed. The claimant will be entitled to the said sum of Rs. 5,33,000/- in addition to what is already awarded.

18. 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. No order as to costs.

19. 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.

20. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Balram