NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1027 of 2014

1. Salik Ram Patel, S/o Ganesh Lal Patel, Aged about 57 years,
2. Smt. Kamla Bai, W/o. Salikram Patel, Aged about 50 years
3. Smt. Dayanti, Wd/o Mahendra Patel, Aged about 32 years,
4. Kumari Nikita Patel, D/o. Late Mahendra Patel, Aged about 3 years Minor, Thru- Mother Smt. Dayanti Patel,
5. Aman Kumar Patel, S/o. Late Mahendra Patel, Aged about 7 years Minor, Thru- Mother Smt. Dayanti Patel,

   All are R/o. Village- Dhangaon, Thana & Tah. Pussour, Distt. Raigarh (C.G.)

---- Appellants

Versus

1. Fanindra Patel, S/o. Ganpat Patel, Aged about 32 years, Occupation-Driver, R/o Village - Usrout Jampali, Thana- Kotra Road, Raigarh, Tah. and Distt. Raigarh (C.G.)
2. Ganpat Patel, S/o. Nityanand Patel, Aged about 45 years, R/o Usrout Jampali, Thana- Kotra Road, Raigarh, Tah. and Distt. Raigarh (C.G.)
3. IFCO TOKIYO General Insurance Company Limited, Branch Office-Raigarh, Gourishankar Mandir Road, Above The Charlie Outer Law, Raigarh, Distt. Raigarh C.G.

---- Respondents

For Appellants	:	Mr. Sanjay Patel, Advocate.
For Respondent No.1 & 2	:	Mr. Roop Naik, Advocate.
For Respondent No.3.	:	Mr. K. Rohan, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

05/08/2015

1. Challenge in this appeal is to the award dated 05.07.2014, passed in Claim Case No.36/2012, by the Second Additional Motor Accident Claims Tribunal, Raigarh, District Raigarh whereby as

against the claim made for Rs.99,80,000/-, an award of Rs.5,80,000/- was passed.

2. The appeal is by the claimants.

3. Briefly stated facts of the case is that on 13.05.2011, the deceased Mahendra Kumar Patel while was going on his motor cycle at village - Kusmura Electric Sub-station, the tractor and trolley driven by the original non-applicant No.1, Fanindra Patel bearing No.C.G.-13D-6973 and Trolley No. C.G.-13D-6974 in rash and negligent manner, caused the accident and ran over the deceased. By impact of such accident, Mahendra Kumar Patel died. It was contended that Mahendra Kuar Patel used to earn Rs.1,80,000/- per year and the claimants i.e. the wife, children, mother and father are completely dependent on the deceased. It was further stated that the deceased used to do the work of tractor, whereby he used to earn Rs.1,80,000/- per year apart from agriculture.

4. The non-applicant No.1, the driver and non-applicant No.2, the owner of the tractor and trolley refuted the claim averments and it was contended that the vehicle was insured with the non-applicant No.3, i.e. the insurance company and the compensation if any, is to be made good by the insurance company.

5. The non-applicant No.3, the insurance company contended that the tractor was registered for agriculture purpose and on that head, it was insured but at the time of the accident, the vehicle was used for other than the agriculture purpose, therefore, there was a breach of

terms of policy was committed. Further it was contended that at the time of the accident, the driver was also not having valid driving license in a result, the accident would be outcome of contributory negligence.

6. The learned Claims Tribunal after evaluating the entire evidence on record came to a conclusion that at the relevant time, the said tractor and trolley was driven in rash and negligent manner which eventually caused the 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 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 the future prospects as also under conventional head no compensation has been properly awarded, therefore, the counsel prays for suitable enhancement.

8. Per contra, learned counsel appearing on behalf of the insurance company supported the award and would submit that the award 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. There is no appeal by the insurance company, the only appeal is by the mother & father alongwith widow and two minor children of the deceased, therefore, the finding is confined to the quantum of

compensation as to whether it was just and proper.

11. The claimants have stated in their claim petition that the income of the deceased was Rs.15,000/- per month. It was further stated that apart from the agriculture income, the claimant used to do the job of tractor and used to earn Rs.1,80,000/-. The father of the deceased namely Salikram Patel was examined as A.W-1. This witness has stated that his son used to earn Rs.15,000 to 20,000/- per month by plying tractor. It was further stated that his son was also used to do the job of agriculture. Learned Claims Tribunal has assessed the income of the deceased to Rs.3,000/- per month. The father of the deceased has stated that his son used to ply the tractor and earned Rs.15,000/- to 20,000/-. Even if the agriculture income is ignored, as the land has devolved on other heirs, but the contribution made by the deceased for agriculture purpose can not be denied and certainly it would add some loss to the claimants. Further the statement has been made that the deceased used to earn Rs.15,000 to 20,000/- per month by plying the tractor, the averments have been in oral averments.

12. In order to arrive to 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.

13. Perusal of the statement of the claimants would show that they belonged to unorganized sector, therefore, it would be difficult to expect the income would have been documented and it could have been proved by any other factum except making oral statement. This fact also can not be ignored that the accident in this case has taken place in the year 2011, therefore, taking the amount of wages of the skilled labour, which was ranging in between Rs.150/- to 200/- per day in between the period of 2010 to 2011 and reverting to the present case, as the accident has happened in the year 2011, taking into the hike of price of essential commodities during the period of from 1994 to 2011 according to the second schedule as also taking into the fact that the wages which was prevailing for the skilled labour 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/-

14. Here in the instant case, the age of the deceased appears to be of 38 years as would be evident from postmortem report, Ex.P/4. Considering the fact that the deceased was aged about 38 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.54,000/- and thereby the 50% of

amount comes to Rs.27,000/- and total income comes to Rs.81,000/-.

15. Now coming to the deduction towards personal expenses, the claim petition was preferred by five persons i.e. the father & mother, wife and two minor children 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 $1/4^{th}$, 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 38 years, as has been shown in the postmortem report, Ex.P/4, therefore, multiplier 15 would be applicable in this case. Thus the total dependency comes to Rs.9,11,250/- (Rs.60,750 x 15).

16. Further, the learned Claims Tribunal has separately not awarded any amount towards loss of consortium to the wife. 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 the Tribunal has failed to award any amount towards loss of estate, therefore, considering the age of the deceased and the avocation carried out by him, Rs.50,000/- is awarded for loss of estate. The amount awarded for loss of love and affection to the mother and father in the opinion of this Court is required to be reassessed and Rs.50,000/- is awarded for loss of love and affection to the mother and father of the deceased. Further a sum of

Rs.1,00,000/- is awarded for loss of love and affection, care and guidance etc. to the minor children. 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. 9,11,250.00
(ii)	For loss of consortium	Rs. 1,00,000.00
(iii)	For loss of estate	Rs. 50,000.00
(iv)	For loss of love and affection to the mother and father	Rs. 50,000.00
(v)	For loss of love and affection and care and guidance to the minor children	Rs. 1,00,000.00
(vi)	For funeral expenses	Rs. 25,000.00
	Grand Total	**Rs.12,36,250.00**

17. Thus the total compensation is recomputed as Rs.12,36,250/-. After deducting Rs.5,80,000/- as awarded by the Tribunal, the enhancement would be Rs.6,56,250/-.

18. In the result, the appeal is allowed in part. The appellants will be entitled to the said sum of Rs.6,56,250/- in addition to what is already awarded by the Claims Tribunal.

19. 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.

20. So far as it relates to apportionment, out of total dependency of Rs.9,11,250/-, the father & mother of deceased i.e. the appellant No.1 & 2 will get Rs.2,50,000/- plus Rs.50,000/- granted towards loss of love and affection i.e., total Rs.3,00,000/-. Further Rs.2,50,000/- - Rs.2,50,000/- each shall be deposited in the name of appellant No. 4 & 5, the daughter & son 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.3.

21. 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.

22. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Balram