NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A (C). No. 1071 of 2014

1. Smt. Prema Bai Verma, wife of Takhat Ram Verma, aged about 46 years, Occupation House wife.

2. Takhatram, son of Dhanau Ram Verma, aged about 50 years, Occupation, Labour.

3. Chaitram, s/o Takhatram, aged about 24 years, occupation Labour,

   All residents of village Mudparkala, Post Anandgaon, Tahsil Berla, District Bemetara (C.G).

---- Appellants

Vs.

1. Upendra Singh, son Jagannath Singh, R/o T.P. Nagar, Hathkhoj, Bhilai, District Durg (C.G).

2. Hardeo Singh, s/o Harnam Singh, aged about 55 years, Resident of Sharda Para Chhawani, Bhilai, District Durg (C.G).

3. The United India Insurance Company Limited, Tara Complex, power House, G.E. Road, Bhilai, District Durg (C.G).

--- Respondents

For Appellants	:	Mr. Govind Devangan, Advocate.
For Respondents 1 & 2	:	None
For Respondent No.3	:	Mr. H.B. Agrawal, Sr. advocate with Mrs. Meera Jaiswal, Advocate.

HON'BLE SHRI JUSTICE GOUTAM BHADURI

JUDGMENT/ORDER ON BOARD

07/08/2015

1. No representation is made on behalf of respondents 1 & 2. Since the primary liability has been fastened over the Insurance Company/ respondent No.3 which is represented, therefore, at the request of learned counsel for the appellants as also learned counsel for Respondent No.3, the matter is finally heard.

2. Challenge in this appeal is to the award dated 31.01.2014 passed in

Claim Case No. 28/2013 by the Additional Motor Accident Claims Tribunal, Bemetara, Distt. Bemetara whereby the claim petition of the claimants was partly allowed by awarding a total compensation of Rs. 2,76,000/-.

3. Briefly stated facts of the case are that the claim petition was filed by the mother, father & brother of deceased. It was pleaded that on 05.01.2011, deceased Motilal after collecting money at Mandi was returning along-with his friend Chandrabhan to their village Amora by Motorcycle Bajaj C.T.100. On the way back, at about 5 p.m., when they reached near a place known as Nahar Puliya Dhan Mandi, the offending truck bearing Regn. No. C.G. 07 C/2955 driven by non-applicant No.2 Hardev Singh dashed the deceased and ran over him. By such impact of accident, the deceased sustained severe injuries and died on the spot. It was contended that at the time of accident, the deceased was aged about 26 years and was earning Rs.1000/- per day and Rs.25,000/- per month. Therefore, on various heads the claimants have claimed a total compensation of Rs.1,61,00,000/-.

4. The driver and owner of the offending vehicle, non-applicants 1 & 2 remained ex-parte before the Tribunal and no written statement was filed on their behalf. The petition was contested by non-applicant No.3. It was stated that by the Insurance Company that the offending vehicle No. C.G. 07-C/2955 was insured in the name of Upendra Singh and the policy was liability only policy and it was insured for the goods vehicle. Further this fact was denied that the truck driven by its driver in rash and negligent manner dashed the deceased Motilal and caused his death. It was further stated that the deceased himself was driving the motorcycle in drunken condition, therefore, he himself was responsible for the accident.

5. The Tribunal after evaluating the facts and circumstances of the case and evidence on record came to finding that at the relevant time, the offending vehicle i.e., truck was being driven in rash and negligent manner which caused accident. Since the said finding is not under challenge by either of the parties, the same is affirmed.

6. The only question which arises for consideration in this appeal is as to whether the claimants are entitled for enhancement of compensation amount ?

7. Learned counsel for the appellant submits that despite evidence on record that the deceased was a skilled labour, as he was working as head mason, the Tribunal has taken the income of Rs.3000/- per month which is very low as on the date of accident i.e., 05.01.2013. It is stated that the wages for skilled labour was Rs.200 - 250 per day during the period. He further submits that the multiplier has also wrongly been applied and no additional amount towards future prospectus has been taken into account. Therefore, considering the age of the deceased, the future prospectus should have been awarded.

8. Per contra, learned counsel for respondent No.3 submits that the award is well merited which do not call for any interference by this Court as just compensation has been awarded.

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

10. The learned Tribunal has assessed the monthly income of the deceased as Rs.3000/- per month. The mother of deceased has stated that she, her husband and son were completely dependent on the deceased Motilal as he used to do the job of contractor as also head mason. It is stated that at the time of accident, the deceased was earning Rs.1000/- per day and was working at Pune and further used to send the amount from there. 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. 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. This fact also cannot be ignored that the accident in this case has taken place in the year 2013. The claimants have stated that the deceased was working at Pune as Head-Mason. Therefore, taking into account the wages of skilled labour which was ranging from Rs. 200 to 250 during the period 2013-2014 and reverting to the present case, as the accident has happened in the year 2013, considering the increase in price of essential commodities during the period from 1994 to 2013, 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. Consequently, the notional income of the deceased is assessed to Rs.4,500/- 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 26 years as would be evidence from postmortem report Ex.P-12. Considering the fact that the deceased was aged about 26 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 incomes comes to Rs.81,000/-.

14. Now coming to the deduction towards personal expenses, the claim petition was preferred by 3 persons i.e., father, mother and brother. Even if the father and mother are taken to be dependents, following the principles laid down in ***Sarla Verma V. D.T.C. (2009) 6 SCC 121***, deduction of 1/3rd is permitted. However, since the deceased was unmarried, 50% would be deducted. Therefore after deducting one-half towards personal expenses, the annual dependency comes to Rs.40,500/- (81,000 – 40,500). Since the deceased belonged to the age group of 26 to 30 years, according to multiplier table given in *Sarla Verma (supra)*, multiplier 17 would be applicable. Thus the total dependency comes to Rs.6,88,500/- (40500 x 17).

15. Under the conventional heads, the learned Claims Tribunal has awarded Rs.2000/- for funeral expenses, Rs.10,000-10,000/- for loss of love and affection to the mother and father; Rs. 10,000/- for towards love and affection to the brother and Rs.10,000/- 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 father; Rs.25,000/- towards loss of love and affection to the brother and 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 prospects	(Rs.54000 + 27500 = 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 17 is applied	Rs. 40,500 x 17 = Rs. 6,88,500/-
(v)	Loss of love and affection to the mother and father	Rs. 75,000/-
(vi)	Loss of love and affection to the brother	Rs. 25,000/-
(v)	Loss of estate	Rs. 25,000/-
(vi)	Funeral expenses	Rs. 25,000/-
	Total	**Rs.8,38,500/-**

16. Thus the total compensation will be Rs.8,38,500/-. After deducting Rs.2,76,000/- awarded by the tribunal, the enhancement would be Rs. 5,62,500/-.

17. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 5,62,500/- 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.

Sd/-
GOUTAM BHADURI
JUDGE

Rao