HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 574 of 2008

1. Gabbar Kewat, S/o Paklu Kewat, Aged 26 years
2. Ku. Krishna Kewat (Minor)D/o of Gabbar Kewat, Aged 9 years. Through Natural Guardian Father Gabbar Kewat, S/o Shri Paklu Ram Kewat.

Both are R/o Village - Godhi, Thana - Bhatapara Gramin, Tehsil - Bhatapara, District - Raipur (C.G.)

---- Appellants.

Versus

1. Mahesh Kumar Dhruv, S/o Baisakhu Ram Dhruv, R/o Vill. Kodapar, Thana-Bhatapara Gramil, Tah. Bhatapara Distt.- Raipur (C.G.)
2. Smt. Jatindar Singh Rana W/o Shri Manjeet Singh Rana, R/o Gandhi Mandir Ward, Bhatapara, Thana & Tehsil - Bhatapara, District - Raipur (C.G.)
3. The Oriental Insurance Company Ltd. Divisional Office No. 1, Madina Building, Jail Road, Kachahari Chowk, District - Raipur (C.G.)

---- Respondents

And

MAC No. 316 Of 2009

Smt. Jatinder Singh Rana W/o Shri Manjeet Singh Rana, aged about 50 years, R/o Gandhi Nagar Ward, Bhatapara, P.S. & Tehsil - Bhatapara, District - Raipur (C.G.)

---- Appellant

Vs

1. Gabbar Kewat, S/o Pakalu Kewat, Aged about 26 years

2. Ku. Krishna Kewat D/o Gabbar Kewat (Minor Through Natural Guardian/Father Gabbar Kewat

Both are R/o Vill.Godhi, PS Bhatapara, Village and Tah Bhatapara, Distt. Raipur (CG)

3. Mahesh Kumar Dhruv S/o Vaisakhu Ram Dhruv R/o Vill.Kodepara, PS Bhatapara, Raipur

4. The Oriental Insurance Company Zone Office No.1, Madina Building Jail Road, Kacheri Chowk, Raipur

---- Respondents

In MAC No.574 of 2008

For appellants – Shri S.K. Guha, Advocate.
For respondent No.2 – Shri Govind Dewangan, Advocate.
Shri A.K. Athaley, counsel for respondent No.3.
In MAC No. 316 of 2009
For appellant – Shri Govind Dewangan, Advocate.
For respondents No.1 and 2 – Shri S.K. Guha, Advocate.
For respondent No.4 – Shri A.K. Ahaley, Advocate.

Hon'ble Shri Justice Goutam Bhaduri
Order

8/09/2015

1. Both the appeals MAC No.574/2008 filed by the claimants and MAC No.316/2009 filed by the owner of the vehicle are being decided together by this common award. Both the appeals are filed against the award dated 5/01/2008 in Claim Case No.17/2007 by the Additional Motor Accident Claims Tribunal, Bhatapara.

2. Briefly stated facts of the case are that on16/07/2007 deceased Smt. Bajarhin Bai along with her husband and daughter were coming back from the market in a cycle. Cycle was being driven by husband of the deceased appellant/claimant Gabbar Kewat. Moment they reached near a village Amli Bhatapara truck bearing registration No.C.G. 04-ZC/1603 which was coming from opposite direction being driven in a rash and negligent manner by original non-applicant No.1 Mahesh Kumar Dhruv dashed the deceased also her husband and daughter whereby Bajarhin Bai died on the spot and the appellant Gabbar sustained severe injuries. It was stated that the offending vehicle is owned by original non-applicant No.2 Smt. Jatinder Singh Rana and it was insured with non-applicant No.3 Oriental Insurance Company. Claimants had stated that deceased used to work along with her husband and used to work in fishy culture and were able to earn Rs.200/- per day. Claimants contended that deceased used to

earn Rs.6000/- per month and because of the death caused the daughter Ku. Krishna Kewat was also deprived of her love and affection. On different heads an amount of Rs.15 lakhs was claimed by the claimants.

3. The non-applicants No.1 and 2 driver and owner of the vehicle refuted the averments of the claim petition. It was stated that at the relevant time, offending vehicle was driven in a moderate speed and it was insured with non-applicant No.3. Consequently, the insurance company is liable to pay the entire compensation as at the time of accident it was insured.

4. The insurance company also refuted the averments of the allegation of the claim petition and it was stated that husband of the deceased Gabbar was drunk and he could not control the cycle. Consequently it met with the accident. The insurance company further contended that at the time of accident the driver of the vehicle was not having valid licence to drive the vehicle and therefore it amounted to breach of condition of the policy. In a result, the insurance company is not liable to pay amount of compensation.

5. Tribunal while adjudication of the claim petition after evaluating the evidence came to a finding that at the relevant time offending truck bearing registration No.C.G. 04-ZC/1603 was being driven in a rash and negligent manner had caused the accident. Trial court has given specific finding that at the relevant time because of the rash and negligent driving it had dashed the deceased. Said finding has not been challenged by the driver or any of the parties. In absence of challenge to such finding, same is affirmed.

6. Appeal bearing MAC No.574/2008 pertains to appeal filed by the claimants for enhancement. This appeal is filed by the husband of the deceased along with minor child. Initially appeal for enhancement is being considered which is filed by the claimants.

7. Learned counsel for the appellants would submit that the tribunal has wrongly assessed the income of the deceased. He submits that categorical statements were made that deceased used to earn Rs.6000/- per month which has not been controverted and in absence of that same should have been enhanced. He further submits that multiplier has also wrongly been applied which too needs to be reconsidered.

8. Per contra, learned counsel appearing on behalf of the insurance company and the owner submits that award is well merited which do not call for any interference.

9. Learned tribunal in its award in its para 26 has assessed the income of the deceased Bajarhin Bai to Rs.10,000/- per year by taking notional income as per schedule of 163-A of the Motor Vehicles Act. Claimant/husband with respect to the income has stated that his wife used to do the job of fishy culture whereby they used to earn Rs.6000/- per month. Award shows that income has been assessed on the basis of schedule 2 to 163-A of the Motor Vehicles Act.

10. 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.

11. Perusal of the statement of the claimant would show that he has stated that he along with the deceased used to earn Rs.6000/- per month. It shows that deceased belong to unorganized sector. Therefore, income would have been documented and could have been proved by any other factum except making oral statement. Date of accident in this case is of 16/07/2007. Therefore, wages of skilled labour as it is stated that deceased was working in fishy culture business and taking into consideration increase in price of essential commodities during the period from 1994 to 2007 and notional income of Rs.3000/- per month in the facts and circumstance of this case.

12. Even if this fact is ignored that deceased was house wife. In such case the fact remains that she was a housewife and a home maker. Hon'ble Supreme Court in case law reported in **2015 (1) C.G.L.J. 536 (SC) in between Jitendra Khimshankar Trivedi & others Vs. Kasam Daud Kumbhar & others** while making assessment of the housewife has laid down that it is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms

of money. A house-wife/home maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency. Therefore, taking into fact that statement have come on record that deceased was engaged in the work of fishy culture it is reasonable to fix her income to Rs.3000/- per month.

13. Claimant/husband though had stated that he sustained the injury and the bills were placed and perusal of the record do not support the same except paper of the criminal case. Consequently, it will be difficult to assess any loss of income in absence of any statement or evidence by the claimant Gabbar to assess the compensation for the personal injury. Consequently, the compensation for enhancement is considered on the available evidence of the wife. Loss of income of the deceased/wife as has been held that income of the wife is assessed to Rs.3000/-. Further perusal of the award would show that tribunal has not added any sum towards future prospect. Here in this instant case as per merg intimation Ex.A-5 and postmortem report Ex.A-8 the age of the deceased is shown as 24 years at the time of accident. Considering the fact that deceased was aged 24 years at the time of accident, there would be further addition of 50% as future prospect as per law laid down in case of **Rajesh & Others Vs. Rajbir Singh & others** reported in **(2013) 9 SCC 54**, over and above income of Rs.36,000/- and thereby 50% amount comes to Rs.18,000/- and total dependency comes to Rs.54,000/-.

14. Now coming to the deduction towards personal expenses. Claim petition is preferred by two persons, therefore there would be deduction of

one third. Therefore after deducting one third i.e. Rs. 18,000/- from Rs.54,000/- dependency comes to Rs.36,000/-. Age of the deceased has been stated to be of 24 years as per postmortem report Ex.A-8 and merg intimation Ex. A-3, a multiplier of 18 would be applicable. After applying multiplier of 18 annual dependency comes to Rs.6,48,000/-.

15. Under the conventional head tribunal has awarded Rs.5000/- for funeral expenses, for loss of consortium to the husband and for loss of love and affection to minor child Rs.15,000/- has been awarded, for loss caused to feed the infant child further an amount of Rs.5000/- has been awarded and Rs.2500/- is awarded for loss of estate. In the opinion of this court the amount so granted under the conventional head 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 considering the age of the deceased, I am inclined to award Rs.50,000/- for loss of love and affection to the minor child, Rs.25,000/- for loss of consortium to the husband, Rs.25,000/- for loss of estate and Rs.15,000/- for funeral expenses. Thus the total compensation to be reassessed is as follows:-

S.No.	Heads	Calculation
(i)	Notional income @ Rs.3000/- per month.	Rs.36,000/- per annum
(ii)	50% of (i) above to be added as future prospects	Rs.36,000 + Rs.18,000 = Rs.54,000/-
(iii)	One third of (ii) deducted as personal expenses of the deceased	Rs.54,000 – Rs.18,000 = Rs.36,000/-
(iv)	Compensation after multiplier of 18 is applied	Rs.36,000 x 18 = Rs.6,48,000/-
(v)	For loss of love and affection to	Rs.50,000/-

	the minor child	
(vi)	For loss of consortium to the husband	Rs.25,000/-
(vii)	For loss of estate	Rs.25,000/-
(viii)	For funeral expenses	Rs.15,000/-
	Total	Rs.7,63,000/-

16. Thus, the compensation will be Rs.7,63,000/-. After deducting Rs.1,97,500/- awarded by the tribunal, the enhancement would be Rs.5,65,500/-.

17. In a result, appeal MAC No.574/2008 filed by the claimants is partly allowed. The claimants will be entitled to the said sum of Rs.5,65,500/- 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.

19. So far as it relates to apportionment, out of the total award of Rs.7,63,000/- it is directed that an amount of Rs.3.5 lakhs shall be deposited in the name of claimant/daughter in the form of Fixed Deposit in any Nationalized Bank for a period of 5 years and rest of the amount shall

be given to the husband.

20. 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.

21. Now coming to the part of compensation which is under challenge in MAC 316/2009. The tribunal has ordered that at the relevant time offending vehicle was being run by Mahesh Kumar Dhruv who was not holding valid licence. Owner in this case has not adduced any evidence before the court only driver was examined as NAW-1. Driver has exhibited the licence as Ex.NA-4. Reading of the statement of the driver Mahesh Kumar Dhruv shows that he stated that driving licence was initially issued from RTO Alwar. Thereafter, it was renewed from RTO Raipur. Perusal of the document shows that initially licence was issued from Alvar RTO which was subsequently renewed at Raipur RTO. In the cross examination witness has stated that he had never been to Alwar and how the licence was made at Alvar he is not in know of it. He has further admitted the suggestion that to obtain a licence the applicant is required to verify it by driving the vehicle and after verification only the licence are being given. He further stated even for giving trial of drive in order to get the licence he has not been to Alwar any point of time and as licence was prepared through one RTO agent. On the basis of such report since owner has not been examined, tribunal has given finding that lincence appears to be fake. Consequently, the insurance company has been directed to pay the compensation and recover the same from the owner. In absence of any

statement by the owner, bare perusal of the statement of the driver it do not inspire confidence. The very inception of the licence that is in question. If licence was initially fake at the initial stage, subsequent renewal will not rectify the defect and reading statement of the driver would show that without going to Alvar licence was issued and it was procured though one agent which substantiates the fact that original licence which was of Alvar RTO appears to be fake. In the result, direction issued by the learned tribunal that first compensation to be paid by the insurance company and thereafter be recovered from the owner cannot be faulted with.

22. In a result, appeal MAC No. 316/2009 filed by the owner fails and it is further directed that enhanced amount of compensation shall be paid by the insurance company and the insurance company in turn shall be entitled to recover the same from the owner in terms of the award.

Sd/-
(Goutam Bhaduri)
JUDGE

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