

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1196 of 2014

1. Ganesh Ram Sahu S/o Bire Lal Sahu Aged About 50 years R/o Devgaon, P.S. Chhura, Distt. Gariyaband, Presently R/o Santoshi Nagar, Raipur, Distt. Raipur C.G.
2. Smt. Ram Bai Sahu W/o Ganesh Ram Sahu Aged About 45 Years R/o Devgaon, P.S. Chhura, Distt. Gariyaband, Presently R/o Santoshi Nagar, Raipur, Distt. Raipur C.G.
3. Smt. Dineshwari Sahu Wd/o Late Tijau Ram @ Ravi Sahu Aged About 24 Years R/o Devgaon, P.S. Chhura, Distt. Gariyaband, Presently R/o Santoshi Nagar, Raipur, Distt. Raipur C.G.
4. Ku. Pallavi Sahu D/o Late Tijau Ram @ Ravi Sahu Aged About 2 Years Minor Hence impleaded Through their natural guardian Mother appellant No.3 Smt. Dineshwari Sahu, age: 24 yrs Wd/o Late Tijau Ram @ Ravi Sahu R/o Devgaon, P.S. Chhura, Distt. Gariyaband, Presently R/o Santoshi Nagar, Raipur, Distt. Raipur C.G.

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Versus

1. Ghanshyam Giri Goswami @ Dipak Giri S/o Horendra Giri Goswami Aged About 38 Years R/o Subhash Ward, Kanker, Near M.G. Ward School, P.S. Kanker, Distt. Kanker C.G.
2. Surendra Giri Goswami S/o Horendra Giri Goswami R/o Subhash Ward, Kanker, Near M.G. Ward School, P.S. Kanker, Distt. Kanker C.G.
3. Manager Bajaj Allianz Insurance Co.Ltd., R/o Shiv Mohan Bhavan, Vidhan Sabha Road, Pandari, Raipur C.G.

---- Respondents

For Appellants – Shri Amiyakant Tiwari, Advocate.
 For Respondents No.1 and 2 – Miss. Seema Singh,
 For Respondent No.3 – Shri Abhishek Sinha and Shri Ghanshyam Patel,
 Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

10/08/2015

1. This is an appeal against the award dated 24/07/2014 passed in Claim Case No.147/2012 by the Chief Motor Accident Claims Tribunal, Raipur.

2. Brief facts of the case are that claim petition was filed by widow, minor children, mother and father of the deceased namely Tijauram @ Ravi Sahu on the averments that on 22/07/2012 because of the accident Tijauram died. It was stated that on the date of accident the deceased was traveling on his motorcycle bearing No.C.G. 04-D.J. 4552 on his side and was coming back to Raipur from his village Gondlakahra Mudagaon. At about 9.30 pm in the night in front of Mintu Public School, another vehicle i.e. Bolero bearing No. C.G.19-C-0927 driven by original non-applicant No.1 Ghanshyam Giri Goswami in a rash and negligent manner dashed Tijau whereby he sustained severe injuries and succumbed to it on the spot. It was stated that at the time of accident he was aged about 26 years and was a driver whereby was getting salary of Rs.5500/- per month. The claimants on the different heads raised a claim of Rs.25,50,000/-. The non-applicants No.1 and 2 contended that at the time of accident the vehicle Bolero was not driven in a rash and negligent manner and it was further contended that at the time of accident the motorcycle wherein deceased was traveling was driven in a rash and negligent manner and as a result of it the accident occurred. It was further stated that at the time of accident the vehicle was insured with non-applicant No.3 i.e. Bajaj Allianz Insurance Company Limited and as such liability if any has to be fastened on the insurance company.

3. The insurance company contended that accident did not happen due to the rash and negligent driving of the Bolero vehicle but the accident happened due to rash and negligent driving of the motorcycle itself and the deceased was also liable for the contributory negligence. It was further contended that the offending vehicle was being used for commercial purpose and the vehicle is registered as private vehicle. Consequently,

there was a breach of policy and insurance company is not liable to make the payment of compensation. Tribunal after assessing the evidence has passed an award of Rs.5,31,000/- in favour of the claimants by holding monthly notional income to Rs.3000/- per month.

4. Learned counsel for the claimants would submit that evidence is on record that the deceased was a driver and according to AW-2 Pankaj Kumar Jain he was getting a salary of Rs.6000/- per month at the time of accident which is also corroborated by the wife. He further submits that work of driver is a skilled labour, therefore in any case salary cannot be assessed less than Rs.6000/- per month. He further placed his reliance in the case of **Minu Rout and another Vs. Satya Pradyumna Mohapatra and others** reported in **(2013) 10 SCC 695** and would submit that in similar circumstances Hon'ble Supreme Court taking into account the nature of work has assessed the income of the skilled labour driver to Rs.6000/- though there was pleading to that salary is of Rs.5000/-. He therefore submits that just compensation has not been awarded which should be suitably enhanced.

5. Per contra, learned counsel for the respondents supported the award. It is contended that under the facts and circumstances, award is well merited as no documents have been filed to substantiate the salary of the deceased. Therefore, submitted that appeal be dismissed.

6. I have heard learned counsel for the parties at length and perused the document.

7. The learned tribunal after assessment of the evidence has come to a finding that at the time of accident offending vehicle Bolero was being driven in a rash and negligent manner. Consequently, it caused the

accident. There is no challenge to such finding. In absence of challenge to the same, such finding arrived at by the learned tribunal are affirmed.

8. Now coming to the question of quantum of compensation. Wife of the deceased has stated that at the time of accident deceased was aged about 26 years and was driver earning Rs.6000/- per month and all claimants are dependents on him. In the cross examination the avocation of the deceased has not been diluted, though suggestion were given to the claimants that deceased was not engaged in job of drivery, however same was denied. One Pankaj Kumar Jain is examined as AW-2. He stated that deceased Tijau @ Ravi Kumar Sahu used to work as driver and he was being paid Rs.6000/- per month. He has proved the certificate Ex.P-16 which purports that salary was being paid to the deceased @ Rs.6000/- per month. Witness AW-2 has further contended in his cross examination that salary which was being paid they were entered in the register, however copy of the register was not placed before the court.

9. Admittedly, except the oral statement and statement of AW-2 along with Ex.P-16 no other document have been placed to prove the salary which was being paid but one thing cannot be denied factum of the avocation that deceased was driver has not been negated or nothing has come against such facts in evidence so as to disregard those facts.

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 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 second schedule in the year 1994 and the date of accident in the given case.

11. Now reverting to the present case. In this case accident happened in the year 2012. Statement is on record that the deceased was driver, therefore court cannot ignore the fact that he was skilled labour at the time of accident and minimum labour which was being paid to skilled labour during the period 2012 and 2013 which was ranging from Rs.150 to 200/-. Statement though made that driver was being paid Rs.6000/-, in facts of the case after assessment of the oral statement and Ex.P-16, I propose to hold the notional income of the deceased to Rs.4500/- per month being salary.

12. Deceased was aged about 26 years, therefore as per law laid down in case of **Rajesh and others Vs. Rajbir Singh and others, (2013) 9 SCC 54-** he being self employed certainly he was entitled for future prospect. Since he was aged about 26 years, there will be addition of 50% as future prospect and thereby 50% of amount i.e. Rs.4500/- which comes to Rs.2250/-. Therefore, assessment comes to Rs.4500 + 2250 = Rs.6750/-. Claimant/wife in her statement had stated that on the income of the deceased wife, children and mother and father of the deceased were dependents. Such statement have not been specifically negated except the fact in cross examination it is stated that before the accident she was living along with child at Raipur and it was frequently visited by her mother-in-law and father-in-law. By such statement it cannot be held that only wife and children were dependent. Since claim petition was filed by four persons as such there will be $\frac{1}{4}$ deduction which comes to Rs.1687/- and monthly dependency comes to Rs.5063/- and the yearly dependency thereby comes to Rs. 60756/- and the deceased was aged about 26 years

at the time of accident as per claim petition at the time of accident. Therefore, multiplier of 17 would be applicable. After applying multiplier of 17 annual dependency comes to Rs.10,32,852/-. On the other heads tribunal has awarded Rs.1 lakh to the wife for loss of consortium which is maintained and further Rs.1 lakh has been awarded for loss of love and affection to the children which is also maintained. No amount has been awarded to the mother and father for loss of love and affection, therefore amount of Rs.50,000/- is awarded to the mother and father for loss of love and affection, amount of Rs.25,000/- for funeral expenses is maintained. Therefore, compensation is re-assessed as under:-

S.No.	Heads	Calculation
(i)	Notional income	Rs.4500/- per month
(ii)	50% of (i) above to be added as future prospect	Rs.4500 + 2250 = Rs.6750/-
(iii)	¼ of (ii) deducted as personal expenses of the deceased	Rs.6750 – Rs.1687 = Rs.5063
(iv)	Yearly dependency	Rs.5063 x 12 = Rs. 60756/-
(v)	Compensation after multiplier of 17 is applied	Rs. 60756 x 17 = Rs.10,32,852/-
(vi)	For loss of consortium to the wife	Rs.1 lakh
(vii)	For loss of love and affection to the children	Rs.1 lakh
(viii)	For loss of love and affection to the mother and father	Rs.50,000/-
(ix)	For funeral expenses	Rs.25,000/-
	Total compensation	Rs.13,07,852/-

13. Thus, the total compensation will be Rs.13,07,852/-. After deducting Rs. 5,31,000/- awarded by the tribunal, the enhancement would be Rs.7,76,852/-.

14. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs.7,76,852/- in addition to what is already awarded.

15. Now coming to the interest, the Supreme Court in ***Asha Verma & 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.

16. So far as it relates to apportionment, out of total compensation, the mother and father of deceased will get Rs.3.5 lakhs plus Rs.50,000/- granted towards loss of love and affection i.e. total Rs.4 lakhs. Another Rs.4 lakhs shall be deposited in the name of claimant minor child in the form of fixed deposit in any Nationalized Bank for a cumulative period of 5 years. The remaining amount shall be disbursed to the widow of deceased.

17. 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