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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A (C). No. 422 of 2015

1. Lakhan Lal Dhruv, son of late Amar Singh Dhruv, aged about 40 years

2. Smt. Ramkumari, wife of Lakhan Lal Dhruv, aged about 38 years

3. Rakesh Kumar, son of Lakhan Lal Dhruv, aged about 18 years,

All are residents of village Hinchhapur, Tahsil Nagri, District Dhamtari (C.G)

Appellants

Vs.

1. Ramkumar Yadav, son of Arjun Singh Yadav, aged about 52 years, R/o village Bhitarras, Tahsil Nagri, District Dhamtari (C.G) – Driver of alleged bus bearing Regn.No.C.G.19-F/0108.

2. Rajkumar Kotwani, son of H.L. Kotwani, aged about 52 years, R/o Muskan Travels, New Bus Stand, Kanker, District Kanker (C.G) – Owner of alleged Bus bearing Regn.No.C.G.19-F-0108

3. The United India Insurance Company Limited, Krishna Complex, Kachaheri Chowk, Raipur, Tahsil and District Raipur – Insurer of alleged Bus bearing Regnb.no.C.G.19-F/0108

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AND

M.A (C). No. 423 of 2015

1. Smt. Ahilya Bai, widow of Late Deenanath Vishwakarma, aged about 45 years

2. Bhupendra Kumar, son of late Deenanath Vishwakarma, aged 20 years

3. Ku. Nirjala, daughter of late Deenanath Vishwakarma, aged about 08 years

Appellant No.3 is a minor through represented by her natural guardian mother namely Smt. Ahilya Bai, widow of late

Deenanath Vishwakarma

All are residents of village Hinchhapur, Tahsil Nagri, District Dhamtari (C.G).

Appellants

Vs.

1. Ramkumar Yadav, son of Arjun Singh Yadav, aged about 52 years, R/o village Bhitarras, Tahsil Nagri, District Dhamtari (C.G) – Driver of alleged bus bearing Regn.No.C.G.19-F/0108.

2. Rajkumar Kotwani, son of H.L. Kotwani, aged about 52 years, R/o Muskan Travels, New Bus Stand, Kanker, District Kanker (C.G) – Owner of alleged Bus bearing Regn.No.C.G.19-F-0108

3. The United India Insurance Company Limited, Krishna Complex, Kachaheri Chowk, Raipur, Tahsil and District Raipur – Insurer of alleged Bus bearing Regnb.no.C.G.19-F/0108

--- Respondents

For the Appellants	:	Mr. Anil Gulati, Advocate.
For Respondent No.1	:	Mr. Pravin Kr. Tulsyan, Advocate.
For Respondent No.3	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate

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<u>HON'BLE SHRI JUSTICE GOUTAM BHADURI</u>

<u>JUDGMENT ON BOARD</u>

<u>27/08/2015</u>

1. Both the appeals are heard together as they are arising out of the same accident. The claimants have filed the appeals against the award dt. 02nd December, 2014 passed by the Chief Motor Accident Claims Tribunal, Dhamtari for enhancement of compensation. M.A(C). No.422/2015 is relating to Claim Case No.26/2014 filed by the claimants Lakhanlal Dhruv, Smt. Ramkumari and Rakesh Kumar, father, mother and brother of deceased Ashwini Dhruv whereas M.A(C). No.423/2015 is relating to Claim Case No.25/2014 filed by Smt. Ahilya Bai, Bhupendra Kumar and Ku. Nirjala being mother, brother and sister of deceased Prabhulal Vishwakarma.

2. Brief facts of the case as pleaded by the claimants are that on 15.10.2013, deceased Ashwini Dhruv and Prabhulal Vishwakarma were coming back to their village Hinchhapur on motorcycle bearing Regn.No.C.G.05-R/7657 and deceased Ashwini Dhruv was a pillion rider. At that time a bus bearing Regn.No.C.G.19-F/0108 driven by non-applicant No.1 Ramkumar Yadav in rash and negligent manner, dashed the motorcycle from behind, due to which, Prabhulal and Ashwini Kumar both sustained grievous injuries. Prabhulal Vishwakarma died on the spot due to serious head injury whereas his friend Ashwini Dhruv died during the course of treatment on 02.11.2013. The offending bus was owned by Non-applicant No.2 and was insured with Non-applicant No.3 the United India Insurance Company, therefore, the claimants being dependents have filed respective claim petitions for the death of deceased persons. In the claim cases, both non-applicants 1 & 2 owner and driver remained ex-parte.

3. Non-applicant No.3 Insurance Company refuted the averments of the claim petitions and contended that at the time of accident, the driver of the bus was not having a valid and effective driving license. It was further stated that the bus was not holding valid permit and consequently there has been breach of conditions of insurance policy and therefore, the Insurance Company is not liable for payment of compensation.

4. The Tribunal in both the claim petitions after evaluating the evidence came to a finding that at the relevant time, the offending vehicle, driven by Non-applicant No.1 in rash and negligent manner, dashed the motorcycle and consequently the accident took place. The said finding has not been challenged by either of parties i.e., the owner/driver of the offending vehicle or Insurer, therefore, in absence of challenge to the said finding, the same is affirmed.

5. Now coming to the quantum of compensation, the learned counsel appearing on behalf of the claimants in both the appeals would submit that the learned Tribunal has failed to grant just compensation. He submits that despite evidence on record, the future prospects have not been awarded and on the conventional heads, meagre amounts have been awarded. He would further submit that in M.A(c). No.422/2015, the Tribunal has not taken into account the amount of entire medical bills and hospital charges. He therefore submits that proper enhancement be made in the quantum of compensation in both the appeals.

6. Per contra, learned counsel appearing for the respondents contended that the awards are well merited which do not call for any interference by this Court as just compensations have been awarded by the Tribunal.

7. I have heard learned counsel for the parties and have also perused the documents and evidence on record.

8. M.A(C). No.422/2015 is arising out of Claim Case No.26/2014 which was preferred by Lakhan Lal, Raj Kumari and Rakesh

Kumar, i.e., father mother and brother of deceased Ashwini Dhruv who was a pillion rider in the motorcycle. In order to assess the quantum of compensation, the statement of the father Lakhan Lal (A,W.1) is perused. He has stated on oath that his son who died in the accident was 19 years of age at the relevant time, he was working as labour and thereby used to earn Rs.6000/- per month. Admittedly, no documents have been filed to prove the income of deceased Ashwini. A perusal of the statements of claimants would show that the deceased belonged to unorganized sector, therefore, it would be difficult to expect the income. Taking into fact that the accident was of the year 2013 and the deceased was a labour, the notional income which has been assessed by the learned Tribunal I.e., 3000/- per month or Rs.36,000/- per annum appears to be just and calls for no interference.

9. A perusal of the impugned award would show that the Tribunal has not granted any sum towards future prospects. The deceased Ashwini was aged about 19 years as evident from Ex.P-5 the postmortem report, therefore, according to the law laid down in ***Rajesh & others Vs. Rajbir Singh & others*** **reported in** ***(2013) 9 SCC 54*****,** further 50% of such income would be added towards future prospects which comes to Rs.18000/-. Thus the total income comes to Rs.54,000/- (36000 plus 18000).

10. Now coming to the deduction towards personal and living expenses, the deceased was unmarried and as per the law laid down in ***Sarla Verma V. D.T.C. (2009) 6 SCC 121*** deduction of one-half (50%) has to be made. Thus, after deducting one-half, the annual dependency comes to Rs.27,000/- (Rs.54,000 – 27000). The deceased belonged to the age group of 16 to 20 years, therefore, according to *Sarla Verma's case (supra)*, multiplier 18 would be applicable. Thus the total dependency comes to Rs.4,86,000/- (27000 x 18).

11. So far as expenses incurred during treatment before the death of deceased Ashwini is concerned, If the evidence of Yogendra Bharti in this case is further perused, it would reveal that deceased Ashwini Dhruv before his death was admitted to hospital for the period from 16.10.2013 till his death on 02.11.2013. The said Yogendra Bharti is examined as A.W.3. This witness has stated that he was Corporate Executive of Suyash Hospital, Raipur. He proved the medical bills from Ex.P10 to Ex.P-186. He stated that during the course of treatment of deceased, the hospital expenditure was of Rs.78,000/- in addition to medical and treatment expenses. This witness has stated that the medical bills were issued by the department and the said bills bear his signatures and seal of hospital. However, the learned Tribunal has awarded only Rs.15,000/- towards expenditure incurred for medical treatment. In the opinion of this Court, there was no reason to deduct the medical expenses incurred by the deceased which was duly approved by the person of the concerned hospital itself. Therefore, it would be just and proper to grant Rs.78,000/- towards expenses incurred for medical treatment as against Rs.15,000/- awarded by the Tribunal.

12. Further more, under the conventional heads, the tribunal has granted Rs.5000/- for funeral expenses, Rs.15,000/- for

loss of love and affection to the claimants that is @ Rs.5000/- per head, Rs.15,000/- for medical expenses and Rs.5000/- for loss of estate which in the opinion of this Court are very meagre and require to be reassessed. In view of the law laid down in ***Asha Verman Vs. Maharaj Singh and others., reported in 2015 AIR SCW 3577*** and looking to the age of deceased, I am inclined to grant Rs.50,000/- for loss of love and affection to the father, mother and brother and Rs.25,000/- for loss of estate. Further Rs.5000/- awarded for funeral expenses is also enhanced to Rs.25,000/-. Thus the 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 + 18,000 = Rs.54, 000/-
(iii)	One half of (ii) deducted as personal expenses of the deceased	Rs. = 54000 – 27,000 = Rs. 27,000/-
(iv)	Compensation after multiplier of 18 is applied	Rs. 27,000 x 18 = Rs. 4,86,000/-
(v)	Medical expenses	Rs. 78,000/-
(vi)	Loss of love and affection	Rs. 50,000/-
(vii)	Loss of estate	Rs. 25,000/-
	Funeral expenses	Rs. 25,000/-
	Total	**Rs.6,64,000/-**

13. Thus the total compensation will be Rs.6,64,000/-. After deducting Rs.,3,64,000/- awarded by the tribunal, the enhancement would be Rs. 3,00,000/-. The claimants will

be entitled to the said sum of Rs. 3,00,000/- in addition to the amount already awarded by the Tribunal.

14. 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.

15. Now coming to M.A(C).No.423/2015 which arose out of claim Case No.25/2014 filed by Ahilya Bai and others for the death of Prabhulal Vishwakarma, the quantum of compensation is assessed. The claim petition was filed by the mother, brother and sister of deceased. The brother of deceased namely Bhupendra Kumar has stated that at the time of accident, the deceased was 24 years and was engaged in avocation of driving the Tractor, thereby the deceased used to earn Rs.5000/- per month. No other documents have been exhibited except the statement of witness. In the cross examination he has stated that he forgot the name of person/place with whom his brother used to drive the Tractor. Considering this fact that such statement was given by brother of the deceased, the amount of notional

income which has been assessed by the learned Tribunal i.e., Rs.3000/- per month or Rs.36000/- per annum appears to be just and reasonable which do not call for interference by the court.

16. Since the Tribunal has not considered the future prospects and looking to the age of deceased that he was 22 years old as evident from Ex.P-5 the postmortem report., and in view of the law laid down in ***Rajesh & others Vs. Rajbir Singh & others*** **reported in *(2013) 9 SCC 54*,** there should be further addition of 50% to such income as futureprospects which comes to Rs.18000/-. Thus the total income comes to Rs.54,000/- (36000 plus 18000).

17. The deceased was unmarried and as per the law laid down in ***Sarla Verma V. D.T.C. (2009) 6 SCC 121*** deduction of one-half (50%) has to be made towards personal and living expenses. Thus, after deducting one-half, the annual dependency comes to Rs.27,000/- (Rs.54,000 – 27000). As the the deceased belonged to the age group of 21 to 25 years, according to *Sarla Verma's case (supra)*, multiplier 18 would be applicable. Thus the total dependency comes to Rs. 4,86,000/- (27000 x 18).

18. Under the conventional heads, the tribunal has granted Rs.5000/- for funeral expenses; Rs.15,000/- for loss of love and affection to the claimants that is @ Rs.5000/- per head and Rs.5000/- for loss of estate which in the opinion of this Court are very meagre. Therefore, the amounts granted under the other heads require to be reassessed. In view of the law laid down in ***Asha Verman Vs. Maharaj Singh and***

others., reported in 2015 AIR SCW 3577 and looking to the age of deceased, Rs.50,000/- for loss of love and affection to the claimants mother, brother and sister of deceased and Rs.25,000/- for loss of estate are awarded. Further Rs.5000/- awarded for funeral expenses is also enhanced to Rs.25,000/-. Thus the 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 + 18,000 = Rs.54, 000/-
(iii)	One half of (ii) deducted as personal expenses of the deceased	Rs. = 54000 – 27,000 = Rs. 27,000/-
(iv)	Compensation after multiplier of 17 is applied	Rs. 27,000 x 18 = Rs. 4,86,000/-
(v)	Loss of love and affection	Rs. 50,000/-
(vi)	Loss of estate	Rs. 25,000/-
(vii)	Funeral expenses	Rs. 25,000/-
	Total	**Rs.5,86,000/-**

19. Thus in M.A(C). No.423/2015 the total compensation will be Rs.5,86,000/-. After deducting Rs.3,49,000/- awarded by the tribunal, the enhancement would be Rs. 2,37,000/-. The compensation amount shall carry interest @ 9% per annum from the date of filing of the claim petition till the date of realization in view of the decision of the Supreme Court in *Asha Verman Vs. Maharaj Singh (supra)*.

20. In the result, M.A(C). No.422/2015 & M.A(C).No.423/2015 are partly allowed.

21. The Registry is further directed to communicate the claimants in writing the “amount of award enhanced in these appeals” as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language.

Sd/-

GOUTAM BHADURI
JUDGE

Rao