

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1247 of 2014

1. Dharmendra Sahu, S/o. Bodhiram Sahu, Aged About 42 Years, R/o. Village-Birejhar, P.S. Birejhar, Distt. Dhamtari C.G.
2. Smt. Pramila, W/o. Dharmendra Sahu, Aged About 40 Years, R/o. Village-Birejhar, P.S. Birejhar, Distt. Dhamtari C.G.

---- Appellants

Versus

1. Manohar Sen, S/o. Ramlal Sen, R/o. Indira Nagar, Kurud, P.S. Kurud, Distt. Dhamtari C.G.
2. Jeevan Yadav, S/o. Bhagatram Yadav, R/o. Sanjay Nagar, Near Gayatri Mandir, Kurud, P.S. Kurud, Distt. Dhamtari, C.G.
3. The New India Insurance Co. Ltd. Through- Divisional Manager, Division No. 2, The New India Insurance Co. Ltd., Address- Jeevan Bima Marg, Vyavsayik Parisar, Raipur, Distt. Raipur, C.G.

---- Respondents

For Appellants : Mr. Amiyakant Tiwari, Advocate
For Respondent No.3 : Mr. Azad Siddiqui, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27.08.2015

1. The instant appeal is against the award dated 24.03.2014, passed in Claim Case No.05/2013 by the learned Chief Additional Motor Accident Claims Tribunal, Raipur.
2. Briefly stated facts are that the claim petition was filed by the father and mother of the deceased namely Devendra Sahu on the ground that on 10.09.2012, the deceased while was working at the side of the road, the offending vehicle i.e. Tavera bearing No.C.G.05 F 0830 driven by the original Non-applicant No.1 namely Manohar Sen in rash and negligent

manner dashed the deceased Devendra Sahu whereby he sustained severe injuries and subsequently he succumbed to the injuries. It was stated by the claimants that the deceased Devendra Sahu was working as Mason and was used to earn Rs.5,000/- per month. Consequently, an amount of Rs. 11,16,000/- was claimed.

3. The Non-applicant No.1 & 2, Driver & Owner of the vehicle, contended that the claim amount has been inflated and it was further stated that at the relevant time of accident the vehicle was insured with the Non-applicant No.3, therefore, the entire liability has to be made good by the insurance company.
4. The Non-applicant No.3, Insurance Company, refuted the averments of the claim petition and stated that the original Non-applicant No.1, the driver of the vehicle, was not having a valid and effective licence and also the fitness of the vehicle was not existing, therefore, there was a breach of terms of the policy and the Insurance Company was not liable to make good the payment.
5. The learned Claims Tribunal after evaluating the facts and evidence has passed an award of Rs.3,48,900/- in favour of the claimants. The Tribunal in its award has held that the accident had happened due to rash and negligent driving of the vehicle and consequently the deceased Devendra Sahu sustained injuries and died. Therefore, in the circumstances, the liability of rash and negligent driving was fastened over the Non-applicant No.1. The said finding are not under challenge before this Court and in absence of any challenge to such finding, the same are affirmed. The other question which falls for consideration is about the quantum of compensation.
6. Learned counsel for the appellants/claimants would submit that the Tribunal has wrongly assessed the income of Rs.3,000/- per month and further stated that considering the age of the deceased, the future prospects should have

been added. He further submits that the multiplier has also wrongly been applied, therefore, just compensation has not been awarded. It is therefore contended that the compensation amount may be increased suitably.

7. Per contra, learned counsel appearing for the insurance company supported the award and stated that according to the facts and evidence which is on record, the award is well merited and the compensation amount do not require any reassessment. He therefore submits that the appeal may be dismissed.
8. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.
9. The Tribunal has assessed the monthly income of the deceased to Rs.3,000/- per month. The father of the deceased in his statement has stated that his son was working as Mason and used to earn Rs.250/- per day. It is stated that at the time of accident, the deceased was earning Rs.5,000/- per month. Admittedly, in this case, no document has been filed in support of the income.
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 claimants would show that the deceased belonged to unorganized sector, therefore, it will 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. The date of accident in this case is 10.09.2012. Therefore, taking into account the wages of skilled labour, as it has been stated that the deceased was working as Mason which is not much diluted in the cross examination and considering the date of accident i.e. 10.09.2012 and taking into consideration the increase in price of essential commodities during the period from 1994 to 2012, 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/-.

12. 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 16 years at the time of accident as would be evident from postmortem report Ex.P-7. Considering the fact that the deceased was aged about 16 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 income comes to Rs.81,000/-.
13. Now coming to the deduction towards personal expenses, the claim petition was preferred by the mother & father of the deceased, as he was unmarried. Therefore, as per the law laid down in case of **Sarla Verma Vs. Delhi Transport Corporation** reported in **(2009) 6 SCC 121**, there would be deduction of 50% i.e. Rs.40,500/-.
14. The learned Tribunal has applied the multiplier of 10 taking into the age of father and mother. Hon'ble the Supreme Court in case of **Amrit Bhanu Shali & others Vs. National Insurance Co. Ltd., and others 2012 AIR**

SCW 3901 and further in case of **M. Mansoor & another Vs. United India Insurance Co. Ltd. & another 2013 AIR SCW 6497**, while selecting the multiplier has taken into account the age of deceased. The Supreme Court while deciding the case of **Amrit Bhanu Shali (Supra)** has considered various case laws at para 15 of its decision and thereafter has laid down the principle that the selection of multiplier should be based on the age of the deceased and not on the basis of age of the dependents. The reasons have been assigned that though there may be number of dependents of the deceased whose age may be different, therefore, the age of the dependents has no nexus. Further in case of **M. Mansoor (supra)**, the apex Court has again considered the fact and has laid down that even if the person is bachelor and is dead, the principles laid down in **Sarla Verma (Smt) Vs. Delhi Transport Corporation, (2009) 6 SCC 121** shall be applicable meaning thereby the multiplier would be on the basis of the age of the deceased and not on the basis of the dependents.

15. In view of the above, since the deceased was shown to be aged about 16 years as per postmortem report, the multiplier of 18 would be applicable. Thus, the total dependency comes to Rs.7,29,000/- (40,500 x 18).
16. The learned Tribunal has granted Rs.1,88,900/- for treatment. Taking into the evidence on record, the amount granted under the medical head of Rs. 1,88,900/- do not require any reconsideration, therefore, the same is maintained.
17. Under the conventional heads, the learned Claims Tribunal has only awarded Rs.10,000/- each for love & affection to the mother & father and Rs.20,000/- for funeral expenses and nothing has been awarded for loss of estate. In the opinion of this Court, the amount so granted under the conventional heads also needs to be reassessed in view of the law laid down in case of **Asha Verma 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/- on the head of loss of love and affection to the mother & father, Rs.25,000/- for funeral expenses and further Rs.25,000/- for loss of estate. 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 + 27000 = 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 18 is applied	Rs. 40,500 x 18 = Rs. 7,29,000/-
(v)	Loss of love and affection to the mother and father	Rs. 50,000/-
(vi)	For medical expenses.	Rs. 1,88,900/-
(vii)	For loss of estate	Rs. 25,000/-
(viii)	Funeral expenses	Rs. 25,000/-
	Total	Rs.10,17,900/-

18. Thus, the total compensation will be Rs.10,17,900/-. After deducting Rs.3,48,900/- awarded by the tribunal, the enhancement would be Rs.6,69,000/-.
19. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 6,69,000/- in addition to what is already awarded by the Claims Tribunal.
20. 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.

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.

Sd/-
(Goutam Bhaduri)
Judge