

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1350 of 2014**

1. Smt. Kala Devi Agrawal @ Kalawati W/o Suresh Kumar Agrawal Aged About 38 years R/o Seoni, Tah. Champa, Distt. Janjgir-Champa C.G., At present R/o Near Jaistambh Chowk, Tah. Katghora, Distt. Korba C.G.
2. Sumit Agrawal, S/o Suresh Kumar Agrawal, aged About 19 Years R/o Seoni, Tah. Champa, Distt. Janjgir-Champa C.G., At present r/o Near Jaistambh Chowk, Tah. Katghora, Distt. Korba C.G.
3. Kumari Bhawna Agrawal, D/o Suresh Kumar Agrawal, aged About 18 Years R/o Seoni, Tah. Champa, Distt. Janjgir-Champa C.G., At present R/o Near Jaistambh Chowk, Tah. Katghora, Distt. Korba C.G.

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1. Siyaram Gond & Ors. S/o Mahettar Gond Aged About 32 Years R/o Gopnai, P.S. Pali, Distt. Korba C.G. (*Driver of the Offending Vehicle*)
2. Omprakash Agrawal S/o Lalchand Agrawal Aged About 65 Years R/o Power House Road, Korba, Distt. Korba C.G. - (*Owner of the offending vehicle*)
3. The Oriental Insurance Company Ltd. Though Divisional Office, Geetanjali Bhavan, Main Road, Korba C.G. (Insurer of the Offending vehicle)

---- Respondents

For Appellants	:	Mr. Pushpendra Kumar Patel, Advocate
For Respondent No. 2	:	Mr. Viprasen Agrawal, Advocate
For Respondent No. 3	:	Mr. Neelkanth Malviya, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Judgment on Board****24-07-2015**

1. This is an appeal against the award dated 26th Sept. 2014 passed in claim Case No.90/2011 by the Additional Motor Accidents Claims Tribunal, Katghora, Distt.Korba whereby the Tribunal has partly allowed the claim petition of the claimants.
2. Brief facts of the case as pleaded by the claimants are that on 10.07.2011 in the night, deceased Shankraj after closing down his

shop at Champa was coming back to his house at Champa Shivni by riding motorcycle. At that time, a Truck bearing Regn. No. C.G.11-AB/0389 driven by non-applicant No.1 Siyaram Gond in rash and negligent manner dashed the motorcycle of deceased from behind whereby the deceased died on the spot. The claim petition was initially filed by the mother, father, brother & sister of the deceased Shankraj Agrawal. During the pendency of the petition, father of deceased namely Suresh Jain died and his name was deleted. As was stated, Suresh Jain was suffering from cancer. It was pleaded that at the time of death, Shankraj was aged about 21 years. He was running daily & provision stores and was earning Rs.13,000/- per month. The applicants have claimed a total compensation of Rs.40 lakhs for the death of deceased on various heads. In addition, they have also claimed Rs. 5 lakhs for the treatment of Suresh Jain, father of deceased.

3. Respondents/non-applicants 1 & 2, the owner & driver of the vehicle refuted the averments of the claim petition and contended that at the time of accident, the vehicle was insured with Respondent No.3. It was further stated that no accident has actually happened with the offending vehicle but since the deceased was driving the motorcycle at a high speed, he could not control the vehicle and fell down into a pit by the side of and therefore, he sustained injuries. So it was prayed that the claim petition be dismissed.
4. Non-applicant No.3 the insurance Company contended that the accident took place with an unknown vehicle and it was stated that the owner and insurer of the vehicle in which the deceased was traveling were not made necessary parties and thereby the claim petition suffers from mis-joinder of parties. It was further pleaded that the deceased was not having valid and effective driving licence and due to his fault, the accident took place. It was also stated that since it was a case of contributory negligence, the claimants are not entitled

for any relief.

5. The Tribunal after evaluating the entire evidence passed an award of Rs.7,95,000/- along-with interest @ 6% per annum. The Tribunal has recorded the findings that the accident took place with offending vehicle due to rash and negligent driving of non-applicant No.1 and at the time of accident, the vehicle was insured with respondent No.3. It has further held that it was not proved that at the time of accident non-applicant no.1 was not having valid and effective driving license and further recorded a finding that it was not proved that the accident was caused violating the terms of insurance relating to licence and permit. The Tribunal has relied on the statement of eyewitness of the accident P.W.2 Valmiki Karsh. This witness has stated that at the relevant time the offending Truck Trailer No. C.G.11-AB/0389 driven by non-applicant No.1 in rash and negligent manner dashed the deceased from behind and the wheels of the Truck ran over him. He chased the offending truck and caught hold of the driver near Dhabha and thereafter the FIR was made vide Ex.P-2. The Tribunal on the basis of documents and evidence of eye witness has reached to a finding that at the relevant time, the offending vehicle having been driven in rash and negligent manner caused the accident, which resulted into death of Shankraj. In absence of any challenge to such finding by either of the parties, the said findings are affirmed.
6. Learned counsel for the appellants would submit that the Tribunal has not awarded the just compensation. It is further submitted that the multiplier has wrongly been applied despite the fact that the deceased was aged about 21 years. He further submits that on the conventional heads also, just compensation has not been awarded.
7. Per contra, learned counsel for respondents 1, 2 & 3 stated that the award is well merited which do not require any reconsideration.
8. I have heard learned counsel for the parties and have also perused

the evidence and documents on record.

9. Initially the claim petition was preferred by mother Smt. Kaladevi, father Suresh Agrawal, brother Sumit Agrawal and sister Ku. Bhavna Agrawal. The father was examined in the case as A.W. 1. He stated that his son Shankraj was running a shop in the name and style of Singhal Provision Store and Daily needs at Agrasen Chowk, Champa. He further stated that he used to earn Rs.13,000/- per month and there were also chances of further enhancement of earning in future. It is further stated that the deceased son was the only earning member in the family and the shop was being run and managed by him alone. This witness has further stated that he being a patient of cancer and Sugar, he could not manage and run the shop and it was being managed by the deceased son exclusively. The income tax return in this case is placed on record as Ex.P-114 & Ex.P-115. Perusal of the income tax return shows that it was for the assessment year of 2010-2011 wherein the income of the deceased was shown as Rs.1,55,305/-. Therefore, the finding of the learned Tribunal that the income of the deceased was Rs.1,55,000/- per annum appears to be absolutely justified. It would be relevant to observe here that during the pendency of the claim case, the claimant father also died who stated that he suffers from cancer, therefore, this fact that the entire income was being earned by the deceased son is corroborated by the happening of the facts which are on record. Having taken the income of Rs.1,55,000/- as per the tax return, the compensation is accordingly reassessed.
10. A perusal of the award would show that the Tribunal has not added any future prospects. Taking into fact that the deceased was self employed and was aged about 21 years at the time of accident as per the postmortem report, Ex.P-8, applying the principles laid down in ***Rajesh and others Vs. Rajbir Singh & others (2013) 9 SCC 54***, the deceased being self employed person and was below the age of 40

years, there would be a an addition of Rs.50% to his actual income towards future prospects. Thus the gross income is worked out to Rs.1,55,000 plus 77,500 = 2,32,500.

11. Now coming to the tax deduction, the income tax rates applicable for the assessment year 2010-2011 are taken into account. As per the tax rates of assessment year 2010-2011, tax was exempted upto the income of Rs.1,60,000/- and beyond the said limit that is from Rs.1,60,000 upto Rs.3,00,000/-, 10% tax was leviable. Therefore, the taxable income comes to Rs.2,32,500 minus Rs.1,60,000 = Rs.72,500/-. Thus the tax would be at Rs.7,250/-. Further, 2% of education cess and 1% of secondary and higher education cess would be applicable on the income tax, which come to Rs.145 + 73 = 218. Thus the total income tax would be Rs.7468/- which is deducted from the taxable income of Rs.2,32,500/-. Thus after deducting the tax and cess from the taxable income, the net income comes to Rs.2,25,032/-
12. Now coming to the deduction towards personal and living expenses, the deceased was unmarried, therefore, applying the principles of *Sarla Verma's case (supra)*, 50% would be deducted which comes to Rs.1,12,516/-. The Tribunal has erred in applying the multiplier 10 by taking the age of claimants. 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 there may be number of dependents of the

deceased whose age may be different, as such, the age of the dependents has no nexus. Further, in case of *N. 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 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. In the instant case, the age of the deceased was 21 years as per the postmortem report, therefore, according to the multiplier table given in *Sarla Verma's case*, the deceased belongs to the age group of 21 to 25 years and thus the multiplier 18 would be applicable. Thus the total dependency comes to Rs.20,25,288/- (1,12,516 x 18).

13. Further the Tribunal has erred in awarding only Rs.10,000/- each towards loss of estate and funeral expenses. The claimants have placed on record the documents wherein the father of deceased Suresh Kumar Agrawal while he was alive filed an application vide Ex.P.112 before the Registration Authority of Shops Establishment, the Municipality, Champa, to suspend the license. Ex.P.110 is license of the shop. In the application, the father of deceased Suresh Kumar stated that as he is patient of cancer and sugar, after death of his son, the shop has been closed which fortifies the fact that after death of deceased Shankraj, the existing shop which was being run and managed by him has been closed. The supreme Court in case of ***2015 AIR SCW 3577 Asha Verman & others V. Maharaj Singh & others*** has granted Rs.1 lakh towards loss of estate following the principles laid down in ***Kalpanaraj & others V. Tamil Nadu State Transport Corporation, 2014 (5) SCALE 479 : (AIR 2014 SC (Supp) 34***. Therefore, I deem it expedient to grant Rs.1,00,000/- towards loss of estate.

14. Reading of the award would further show that the Tribunal has not

awarded any sum towards loss of love and affection to the mother. Following the case law laid down in **Asha Verman (supra)**, further amount of Rs.50,000/- is awarded towards loss of love and affection to the mother and the amount of Rs.10,000/- granted for funeral expenses is further enhanced to Rs.25,000/-. Thus the total compensation to be reassessed as follows:

S.No.	Heads	Calculation
(i)	Annual income of deceased per month	Rs.1,55,000/-
(ii)	50% of (I) above to be added as future prospects	(Rs.1,55,000 + 77,500 = Rs.2,32,500/-
(iii)	Income after Tax deduction	Rs. 2,32,500 – 7,468/- =Rs. 2,25,032/-
(iv)	One half of (iii) deducted as personal expenses of the deceased	Rs. = 2,25,032 – 1,12,516 = Rs. 1,12,516/-
(iv)	Compensation after multiplier of 18 is applied	Rs. 1,12,516 x 18 = Rs. 20,25,288/-
(v)	Loss of estate	Rs. 1,00,000/-
(vi)	Loss of Love and affection to mother	Rs. 50,000/-
(vii)	Funeral expenses	Rs. 25,000/-
	Total	Rs.22,00,288 /-

15. Thus the total compensation will be Rs.22,00,288/-. After deducting Rs.7,95,000/- awarded by the tribunal, the enhancement would be Rs. 14,05,288/-.
16. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 14,05,288/- in addition to what is already awarded.
17. 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.

18. 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**