NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A (C). No. 614 of 2013

1. Smt. Shweta Yadaw, wife of Late Karun Kumar Yadav @ Tarun Kumar, aged about 22 years.

2. Kishan Gopal Yadaw, son of Late Karun Kumar Yadaw @ Tarun Kumar, aged about 01 year;

3. Shri Chhedilal Yadav, son of Hiralal Yadav, aged about 60 years,

4. Smt. Janki Yadaw, wife of Chhedilal Yadaw, aged about 55 years,

   Applicant No.2 being minor represented through the mother (natural Guardian) Appellant No.01 Smt. Shweta Yadaw, wife of Late Karun Kumar Yadaw @ Tarun Kumar, aged about 22 years,

   All residents of Vivekanand Nagar, Mopka, Bilaspur, Police Station, Tahsil, Revenue & Civil District Bilaspur (C.G).

---- Appellants

Vs.

1. Arjun Pradhan, son of Ghasinath Pradhan, resident of village Bhathaliroad, Police Station Baragarh, District Baragarh (Odisha) (C.G).

2. Shri Haresh Nath Tiwari, son of Rajendra Tiwari, resident of through T.B.T. Company, Bhanpuri, Raipur, Police Station, Tahsil, Revenue & Civil District Raipur (C.G).

3. Bajaj Allianz General Insurance Company Limited through : Branch Manager, Branch Office Shivmohan Bhawan, Vidhansabha Road, Pandari Raipur, Police Station, Tahsil, Revenue & Civil District Raipur (C.G).

--- Respondents

For Appellants	:	Mr. Anand Kesarwani, Advocate.
For Respondent No.3	:	Mr. Sachin Singh Rajput and Ms. Renu Singh, Advocates.

HON'BLE SHRI JUSTICE GOUTAM BHADURI

JUDGMENT/ORDER ON BOARD

09/09/2015

1. This is an appeal against the award dated 23.03.2013 passed in

Claim Case No. 96/2012 by the 5th Addl. Motor Accident Claims Tribunal, Bilaspur, Distt. Bilaspur, Chhattisgarh, whereby the claim petition of the claimants was partly allowed by awarding a total compensation of Rs. 4,17,400/- with further interest @ 7% per annum.

2. Briefly stated facts of the case are that the claim petition was filed by the claimants i.e., widow, minor son and mother & father of deceased being dependents of Karun Kumar @ Tarun Kumar. It was pleaded that on 01.11.2011, the deceased was traveling along-with his friend Yogesh in his Maruti Van. They were going to Nawagarh from Bilaspur. The said Maruti van was driven by Yogesh in a very moderate speed. On the way at about 12.35 a.m., during night, the offending Tata Truck bearing Regn.No.C.G.04-ZA/8229 driven by non-applicant No.1 Arjun Pradhan in rash and negligent manner tried to over take another vehicle and in that process the offending Truck came on wrong side and dashed the Maruti Van wherein the deceased was traveling. By impact of such accident, the passengers of the Maruti van sustained severed injuries. Since deceased Karan Kumar sustained injuries on head, hand, legs, chest and other parts of the body he was taken to the CIMS hospital. Looking to the serious condition of the deceased, he was referred to Apollo Hospital, Bilaspur where during the course of treatment, he succumbed to the injuries on 02.01.2013. Therefore, on different heads, an amount of Rs.16,50,000/- was claimed for the death of deceased.

3. Non-applicants 1 & 2, in their reply stated that because of the rash and negligent driving of driver of Maruti Van, the accident had happened. It was further stated that at the relevant time, the Truck was being driven in a moderate speed and therefore, the driver of Truck was not liable for the accident. It is further contended that the

vehicle was insured with Non-applicant No.3 and the Insurance Company shall be liable to make good the payment.

4. The Insurance Company in its reply stated that neither the deceased was working as driver nor was earning Rs.5000/- per month. It was stated that no accident had actually happened with the insured vehicle and the accident happened due to rash and negligent driving of driver of Maruti Van itself. It is further contended that the driver and owner of Maruti Van wherein the deceased was travelling have not been made as party/respondents and therefore, the appeal should have been dismissed for want of proper parties.

5. The Tribunal after evaluating the facts and circumstances of the case and evidence on record reached to a finding that the offending truck driven by non-applicant No.1 in rash and negligent manner dashed the Maruti Van whereby the deceased who was traveling in Maruti Van sustained grievous injuries and died during the course of treatment. The Tribunal has also found that there was no contributory negligence and at the relevant time there was no breach of conditions of insurance policy so far as it relates to the offending Truck. The said findings have not been challenged by either of the parties i.e., owner/driver or the insurer, therefore, in absence of any challenge to such findings, the same are affirmed.

6. Shri Anand Kesarwani, learned counsel appearing for the appellants would submit that the Tribunal has failed to award just compensation and only on the basis of presumption the annual income of the deceased was taken @ Rs.2600/- per month and on conventional heads, meagres sums have been awarded, therefore, the award of Tribunal may suitably be enhanced.

7. Shri Sachin Singh Rajput, learned counsel appearing on behalf of

Respondent No.3 Insurance Company assisted by Miss Renu Singh, Advocate submits that the Tribunal has correctly assessed the income of the deceased. However, he contends that according to the law laid down in ***Sarla Verma Vs. D.T.C. (2009) 6 SCC 121***, multiplier of 17 should have been applied as the date of birth of deceased was 19.08.1982 and the deceased was approximately aged about 29 years and 3 months. Consequently the multiplier has wrongly been applied.

8. I have heard learned counsel for the parties at length and have also gone through the documents and evidence on record.

9. The only question which arises for consideration in this appeal is as to whether the claimants are entitled for enhancement of compensation amount ?

10. The Tribunal has assessed the monthly income of Rs.2600/- per month. The wife of deceased has stated on oath that at the time of accident the deceased was 29 years and he used to do the job of driver. She has further stated that by avocation of driving, he used to earn Rs.5000/- per month and in addition, he was also getting daily allowance of Rs.50/-. This fact is further corroborated by Ram Sai Yadav (A.W.3). He has stated that the deceased Karun Kumar @ Tarun Kumar used to drive the bus owned by him bearing Regn. No. C.G. 11-ZB/0344. Further this witness has stated that at the time of accident, deceased Karun Kumar used to get monthly wages of Rs.5000/- from him and apart from this, daily allowance of Rs.50/- per day was also being paid to the deceased. He has further stated that for the last 6-7 years, the deceased used to drive Bus. Undoubtedly, in this case, no documents have been placed on record to support the income.

11. 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/- way back 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.

12. Perusal of the statements of the claimant witnesses would show that wife of deceased has stated that her husband used to get the wages of Rs.5000/- per month and in addition, Rs.50/- per day as daily allowance which is also corroborated by P.W.3 Ram Sai Yadav under whose control the deceased used to work as driver. Therefore, looking to the avocation of the deceased, it cannot be said that he was not a skilled labour. Though the documents have not been placed on record to prove the income, but taking into consideration that the accident took place in the year 2011 as also the increase in prices of essential commodities during the period from 1994 to 2011 and further taking into fact the wages which were prevailing for the skilled labour according to 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 deceased is assessed as Rs.4,500/- per month and thereby the annual income comes to Rs.54,000/-.

13. 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 29 years & few months as would be

evident from report Ex.P-8 issued by the Licensing Authority wherein the date of birth was mentioned as 19.08.1982. Considering the fact that the deceased was above 29 years of age 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 (2013) 9 SCC 54,*** over and above the income of Rs.54,000/-. After adding 50% of the income i.e., 27,000/-, the total incomes comes to Rs.81,000/- (Rs.54000 plus 27000).

14. Coming to the deduction towards personal expenses, the claim petition has been preferred by four claimants i.e., wife, minor son and father and mother of deceased. Therefore, following the principles laid down in ***Sarla Verma V. D.T.C. (2009) 6 SCC 121***, one-fourth would be deducted from such income. Therefore, after deducting one-fourth i.e., 20,250/-, the annual dependency comes to Rs.60,750/- (81,000 minus 20,250). Since the deceased belonged to the age group of 26 to 30 years, according to multiplier scale given in *Sarla Verma (supra)*, multiplier 17 would be applicable. Thus the total dependency comes to Rs. 10,32,750/- (Rs.60,750 x 17).

15. Under the conventional heads, the learned Claims Tribunal has awarded Rs.20,000/- for loss of estate to all the claimants i.e., @ 5000/- each; Rs.5000/- for loss of consortium to the wife; Rs.5000/- for loss of love and affection to the minor son; Rs.5000 – 5000/- for loss of love and affection to the father and mother of deceased and Rs.3000/- for funeral expenses and thereby a total sum of Rs.43,000/- was awarded under the other heads, which in the opinion of this court, is not just and proper. Therefore, the amounts under conventional heads 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***. Hence, I am inclined to award

Rs.1,00,000/- for loss of consortium to the wife; Rs.50,000/- for loss of love and affection to the minor son, Rs.50,000/- for loss of love and affection to the father and mother of deceased; Rs.50,000/- for loss of estate. Further Rs.3000/- granted for funeral expenses is enhanced to Rs.25,000/-. 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 fourth of (ii) deducted as personal expenses of the deceased	Rs. = 81000 – 20,250 = Rs. 60,750/-
(iv)	Compensation after multiplier of 17 is applied	Rs. 60,750 x 17 = Rs. **10,32,750/-**
(v)	Loss of consortium	Rs. 1,00,000/-
(vi)	Loss of love and affection, care and guidance to the minor son	Rs. 50,000/-
(vii)	Loss of love and affection to the mother and father	Rs. 50,000/-
	Loss of estate	Rs. 50,000/-
	Funeral expenses	Rs. 25,000/-
	Total	Rs. **13,07,750/-**

16. Thus the total compensation will be Rs.13,07,750/- After deducting Rs.,4,17,400/- awarded by the tribunal, the enhancement would be Rs. 8,90,350/-.

17. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 8,90,350/- in addition to what is already awarded.

18. 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.

19. So far as it relates to apportionment, out of the total dependency of Rs.10,32,750/-, the mother and father will get Rs.3,50,000/- in addition to Rs.50,000/- granted for loss of love and affection, thereby will get a total sum of Rs.4 lakhs. Further, Rs.3,00,000/- shall be deposited in the name of minor son in any nationalized Bank for a period of 5 years. Rest of the amount shall be disbursed to the claimant wife.

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.

Sd/-
GOUTAM BHADURI
JUDGE

Rao