

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 626 of 2013**

The National Insurance Co. Ltd. through its Sr. Divisional Manager,
D.O. - B1 Taha Complex, Ring Road-1, Priyadarshini Nagar, Bilaspur,
C.G.

---- Appellant

Versus

1. Narayan Kumar S/o Late Vidyadhar Aged about 56 Years, R/o Khatkati, P.O. & Tah. Basna, Distt. Mahasamund, C.G.
2. Saaybani Bai W/o Narayan Kumar, Aged about 53 Years, R/o Khatkati, P.O. & Tah. Basna, Distt. Mahasamund, C.G.
3. Sarjooram Nishad S/o Ramu Nishad Aged about 53 Years, R/o Santoshi Nagar, Raipur, C.G.
4. Topan Das S/o Pohuram, R/o Gali No. 7, Telibandha, Raipur, C.G.

---- Respondents

For Appellant : Shri R. N. Pusty, Advocate

For Respondents : Shri J. K. Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****10/08/2015**

The present appeal has been preferred by the Insurance Company under Section 173 of the Motor Vehicles Act challenging the award dated 01.03.2013 passed by the Second Additional Motor Accidental Claims Tribunal, Raipur in Motor Accidental Claim case No.31/2012. There is also the cross objection against the award passed, by the claimants seeking enhancement of the amount awarded.

2. Facts of the case are that respondents 1 & 2 had filed a claim application before the Tribunal claiming for compensation under the Motor Vehicles Act on account of the accident that took place on 13.11.2011 wherein son of the claimants Sanjay Kumar met with an accidental death.

3. According to the claimants, the deceased Sanjay Kumar at the relevant time was aged about 25 years and was working as a Supervisor in Jeevan Mahendra Poultry Farm situated at village Chherikhedi, District Mahasamund. According to the claimants, the deceased used to earn an amount of Rs.10,000 per month, in support of which they had filed Exhibit P-13 along with the claim application.

4. The Tribunal after considering the pleadings and the evidences which have come on record has not accepted the wage certificate Exhibit P-13 filed by the claimants on the ground that the said wage certificate has not been properly proved nor has been substantiated by the claimants in any manner. At the same time, the Tribunal took notional income of Rs.3,000 to be the income of the deceased on the basis of which applying the multiplier of 17, calculated the compensation payable to the claimants as Rs.3,18,000 vide its award dated 01.03.2013.

5. It is this award which is under challenge by the Insurance Company.

6. Apart from the present appeal filed by the Insurance Company, the claimants i.e. the respondents 1 & 2 have also filed their cross-objection in the instant appeal as per order 41 Rule 22 of the Code of Civil Procedure seeking for enhancement of compensation awarded by the Tribunal.

7. The Appellant/Insurance Company has raised various grounds challenging the impugned award passed by the Tribunal but after arguing for sometime counsel for the appellant confined his argument only on two main grounds: Firstly the income has not been properly proved by the claimants. Secondly, the multiplier applied is not proper in as much as the multiplier in the instant case could have been less looking to the age

of the claimants who are also the parents of the deceased. Counsel for the Appellant submits that so far as the employment of the deceased with Jeevan Mahendra Poultry Farm is concerned, the same is disputed as there is no cogent and sufficient evidence to establish the employment and therefore sought for setting aside the award passed by the Tribunal.

8. Counsel for the claimants, on the contrary, submits that the quantum of the award passed by the Tribunal deserves to be enhanced on account of the fact that the Tribunal has not considered the future prospects while granting compensation. Similarly, the Tribunal has also not awarded any compensation towards other conventional heads payable to the claimants and on these grounds the amount awarded by the Tribunal deserves to be enhanced.

9. Considering the submissions made by the counsel appearing on either side, a perusal of the record would show that the Tribunal has rightly taken into account the notional income on account of the fact that the certificate Exhibit P-13 submitted on behalf of the employer on the basis of which the wage of Rs.10,000 being claimed by the claimants has not been properly proved before the Tribunal. The Tribunal has rightly taken that into account considering the fact that the accident occurred in the year 2011 where admittedly the income of a labour would have been Rs.100 per day and as such the monthly income would be Rs.3,000. Thus, this Court does not find any infirmity in the finding of the Tribunal holding Rs.3,000 as monthly income of the deceased.

10. As regards the multiplier applied, if we take into consideration the principles laid down by the Supreme Court in the case of *Sarla Verma and others v. Delhi Transport Corporation and Others* reported in 2009 A.C.J. 1298, it would be clear that the multiplier applied by the Tribunal is

also in accordance with the directives given by the Supreme Court in the aforesaid judgment. Thus, the award of the Tribunal so far as the multiplier applied also is concerned, the same does not warrant any interference.

11. So far as the cross-objection raised by the respondents 1 & 2 is concerned, if we peruse the record, it would show that the Court below has definitely not considered granting compensation towards conventional heads. Similarly, the Court below has also not considered the future prospects of the deceased while granting compensation.

12. So far as the future prospects is concerned, the Supreme Court in 2013 A.C.J. 1403 (Rajesh and Others v. Rajbir Singh and others) has categorically held relying upon the judgment rendered in 2012 A.C.J. 1428 (SC) (Santosh Devi v. National Insurance Company Limited) that it would be reasonable to say that a person who is self employed or employed will get increase in income over the period of times and if such person becomes victim of an accident, the future prospects has to be taken into consideration for calculating the amount of compensation.

13. The Supreme Court in the case of Santosh Devi v. National Insurance Company Ltd. and Ors. reported in 2012 AIR SCW 2892 has held that it will be naive to say that wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment would remain the same. The Supreme Court has further held that if the said self-employed person or the employed person becomes a victim of accident, a future prospects has also to be borne in mind while calculating the compensation.

14. Applying the principle laid down in the aforesaid two decisions of the Supreme Court this Court is of the opinion that the Tribunal was not

justified in not taking future prospects while granting compensation to the claimants.

15. The Supreme Court recently in the case of Munnalal Jain and Another v. Vipin Kumar Sharma and Others reported in (2015) 6 SCC 347 relying upon the case of Rajesh (supra) has held in paragraph-10 as under:

“As far as future prospects are concerned, in Rajesh v. Rajbir Singh, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote: (SCC p.61, para 8)

“8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.”

The deceased being of the age of 30 years, 50% is the required addition.”

16. So far as the question of multiplier is concerned, in this very judgement, the Supreme Court considering the point whether multiplier should depend on the age of the dependant or the age of the deceased has held as under:

“11. The remaining question is only on multiplier. The High Court following Santosh Devi, has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute

as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote:(Reshma Kumari case¹, SCC p.88, para 36)

“36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma.”

Thus, the multiplier applied by the Tribunal in the present case is proper, legal and justified.

17. Taking into consideration the over all facts and circumstances of the case, in the opinion of this Court, 50% increase in the wages towards the future prospects would be appropriate and the compensation payable to the claimants therefore deserves to be enhanced by another 50% of what has been awarded by the Tribunal. As such, the award of the Tribunal is enhanced by 50% which comes to Rs.1,59,000. While rounding up the amount, the enhanced compensation would be Rs. 1,60,000 which would be payable to the claimants and the said amount shall also carry the rate of interest as awarded by the Tribunal but the interest on the enhanced amount would be payable from the date of award.

18. However, looking to the age of the claimants who are also the parents of the deceased, this Court is of the opinion that the claimants may not be entitled for any compensation towards the conventional heads.

¹ (2013) 9 SCC 65

19. Accordingly, the appeal of the Insurance Company stands dismissed and the cross-objection of the claimants who are the respondents 1 & 2 in the instant appeal stands allowed to the extent aforementioned.

**Sd-
(P. Sam Koshy)
JUDGE**

Bhola