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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 627 of 2013

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

---- Appellant

Versus

1. Madhav Nand S/o Shyam Sundar Nand, Aged about 46 Years, R/o Dhaman (Gutkuri), Block Basna, Gram Panchayat- Chandkhuri, Distt. Mahasamund, C.G.
2. Bhagmati Nand W/o Madhav Nand, Aged about 43 Years, R/o Dhaman (Gutkuri), Block Basna, Gram Panchayat- Chandkhuri, Distt. Mahasamund, C.G.
3. Shyamsundar Nand, Aged about 61 Years, R/o Dhaman (Gutkuri), Block Basna, Gram Panchayat- Chandkhuri, Distt. Mahasamund, C.G.
4. Sankara Bai W/o Shyamsundar, Aged about 58 Years, R/o Dhaman (Gutkuri), Block Basna, Gram Panchayat- Chandkhuri, Distt. Mahasamund C.G.
5. Sarjooram Nishad S/o Ramu Nishad, Aged about 53 Years R/o Santoshi Nagar, Raipur, C.G.
6. 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 26.02.2013 passed by the Fifth Additional Motor Accidental Claims Tribunal, Raipur in Motor Accidental Claim case No.177/2012. There is also the cross objection against the impugned award by the claimants seeking enhancement of the amount awarded.

2. Facts of the case are that the respondents 1 to 4 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/grandson of the claimants Santlal Nand met with an accidental death.

3. According to the claimants, the deceased Santlal 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.8,000 per month, in support of which they had filed Exhibit P-11 along with the claim application.

4. The Tribunal after considering the pleadings and the evidences which have come on record has accepted the wage of the deceased to be Rs.8,000 per month on the basis of which applying the multiplier of 18, calculated the compensation payable to the claimants as Rs.8,84,000 vide its award dated 26.02.2013.

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 to 4 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. Counsel for the appellant Insurance Company attacks the impugned award on the ground that the salary of Rs.8,000 as has been accepted by the Tribunal is not proper in as much as Exhibit P-11 which is the salary certificate said to have been produced by Jeevan Mahendra Poultry Farm has not been properly proved. He submits that the author of the said certificate has not given any evidence before the Court below proving the same nor is there any officer deputed by the author of the certificate or on behalf of Jeevan Mahendra Poultry Farm for proving the said document. Counsel for the appellant submits that as the document Exhibit P-11 itself has not been proved, the wage of Rs.8,000 cannot be accepted to be proper for calculating the compensation.

8. However, taking into account the fact that the Insurance Company does not have any evidence to disprove the fact that the deceased was not working as a Supervisor the said issue stands proved. Once when it is proved that the deceased was working as a Supervisor, any person holding a post of Supervisor in the year 2011, admittedly, would have got salary of more than Rs.6,000 per month. If Rs.6,000 is taken to be the monthly salary of the deceased, after deduction of 50% as his personal expenditure, Rs.3000 will be the salary to be taken into consideration for the purpose of calculating the compensation on the basis of which the compensation payable to the claimants would be Rs.6,48,000. Accordingly, accepting the contentions of the Insurance Company that the calculation made by the Tribunal taking the salary of the deceased Rs.8,000 per month would not be proper, legal and justified and the compensation payable to the claimants would therefore liable to be reduced from Rs.8,84,000 to Rs.6,48,000 taking the salary of the deceased to be Rs.6,000 per month. Accordingly, the compensation amount awarded by the Tribunal is reduced from Rs.8,84,000 to Rs.6,48,000.

9. So far as the cross-objection raised by the respondents 1 to 4 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.

10. 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.

11. 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.

12. 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.

13. 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."
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> The deceased being of the age of 30 years, 50% is the required addition."

14. 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 case[1], SCC p.88, para 36)
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> "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."

1 (2013) 9 SCC 65

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

15. 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%. In view of the fact that this Court is reducing the compensation awarded by the Tribunal from Rs.8,84,000 to Rs.6,48,000, the claimants would be entitled 50% of the modified compensation amount of Rs.6,48,000. As such, 50% amount of compensation towards future prospects would come to Rs. 3,24,000 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.

16. So far as the other heads on which the claimants are claiming are concerned, taking into consideration the total facts and circumstances of the case and looking to the age of the claimants who are the parents of the deceased, this Court is of the opinion that they may not be, at this juncture, entitled for further compensation towards conventional heads. Thus, the enhancement is allowed only to the heads of future prospects.

17. With the aforesaid modification in the impugned award, the appeal of the Insurance Company stands dismissed and the cross-objection of the claimants who are the respondents 1 to 4 in the instant appeal stands allowed to the extent aforementioned.

Sd/-

(**P. Sam Koshy)**
JUDGE

Bhola