

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 857 of 2005**

1. Smt. Meena Bai Yadav, aged about 33 years, widow of Late Nanhu Yadav @ Bisram
 2. Lalaram Yadav, aged 16 years, S/o Late Nanhu Yadav
 3. Ku. Rekha Yadav, aged about 13 years, daughter of late Nanhu Yadav
 4. Rajaram Yadav aged 12 years, s/o late Nanhu Yadav
- Appellants No. 2 to 4 being minors represented through natural Guardian mother Smt. Meena Bai. All residents of Mathpurena, Raipur, Tahsil & District Raipur (C.G.)

---- Appellants**Versus**

1. Mojam Mian, aged about 45 years, s/o Balle Mian, Musalman, Resident of Ramnagar, P.S. Bamujjaghat, Tahsil Devaria (U.P).

Other Address : C/o Balaji Transport, Bhanpuri District Raipur (C.G).
2. Gokulchand S/o Preetam Chand, resident of Golebazar Fruit Market, Kharagpur, Distt. Mednapore (W.B).
3. National Insurance Company Ltd., Kharagpur Branch, through Brnach Manager, Naveen Market, Phoolchowk, Raipur.

---- Respondents

For Appellants	:	Mr. C. K. Sahu, Advocate
For Respondent No.3	:	Mr. Dashrath Gupta, Advocate

HON'BLE SHRI JUSTICE GOUTAM BHADURI**JUDGMENT ON BOARD****13/08/2015**

1. Challenge in this appeal is to the award dated 31.03.2005 passed in Claim Case No. 100/2004 by the XI Additional Motor Accident Claims Tribunal (FTC) Raipur, whereby the claim petition of the claimants

was partly allowed by awarding a total compensation of Rs.2,24,000/-

2. Briefly stated facts of the case are that the claim petition was filed by the widow and 3 minor children of one Nanhu Yadav with the averments that on 11.6.2004 Nanhu was driving a Tractor bearing Regn. No. C.G. 04-D/1739. At that time, near a place known as Khalsa Dhabha, a Truck bearing Regn. No. WB-33/9610 driven by non-applicant No.1 Mojam Miyan in rash and negligent manner dashed the Tractor thereby the deceased sustained grievous injuries and died on the spot. It was stated that one Siyaram Nishad who was also traveling in the said Tractor was injured. It was pleaded that the truck was owned by non-applicant No.2 Gokul Chand and was insured with Non-applicant No.3. It was stated that at the time of accident, the deceased was aged about 35 years and was working as driver under the control of one Verma contractor whereby he used to earn Rs.4000/- per month apart from daily allowance of Rs.60/-. Therefore, on various heads the claimants have claimed a total compensation of Rs.15,20,000/- for the death of deceased.
3. The Tribunal after evaluating the evidence on record has passed an award of Rs.2,24,000/- in favour of the claimants. The instant appeal is by the appellant claimant. Along-with this appeal, records of another appeal being M.A.No.798/2005 is also attached. A perusal of such record would show that challenging the liability fastened over the insurer of the offending truck, M.A.No.798/2005 was filed by the Insurance Company before the Division Bench of this Court raising the ground that at the time of accident, the tractor trolley was also liable for contributory negligence. The said appeal was dismissed on 2nd January 2006 by the Division Bench wherein it was held that the finding in respect of liability fastened over the insurer of the offending Truck i.e., respondent No.3 herein was well merited. Therefore, as a natural consequence it amounts that the finding arrived at by the

learned Tribunal that at the relevant time, the offending vehicle i.e., the Truck bearing No. W.B. No. 33/9610 was driven in rash and negligent manner stands upheld by the Division Bench of this Court in M.A. No.798/2005. Hence, the said finding cannot be disturbed in the instant appeal.

4. Learned counsel for the claimants/appellant submits that the Tribunal has failed to award just compensation. He further submits that despite evidence on record that the deceased was earning Rs.4000/- per month apart from daily allowances, the Tribunal has misconstrued itself in holding the income of the deceased as Rs.1500/- per month. Therefore, he submits that the award passed by the Tribunal may suitably enhanced.
5. Per contra, learned counsel appearing on behalf of respondent No.3 would submit that the award is well merited which do not call for any interference.
6. I have heard the learned counsel for the parties at length and have perused the documents and evidence on record.
7. The only issue which is to be adjudicated in this appeal is the quantum of compensation. The wife of deceased namely Meena Yadav had stated that her husband deceased used to work as driver under the control of a contractor and was getting a salary of Rs.4000/- per month. That apart, he was also getting Rs.50/- as daily allowance and they were completely dependent on the deceased. The employer of the deceased namely Vikas Verma was examined as A.W.2. He stated that the deceased Nanhu Yadav was his employee as a Driver and was getting a monthly salary of Rs.4000/- apart from allowance at the rate of Rs.50/- per day. The salary certificate issued by the employer is marked as Ex.P-10 and according to which, the deceased was getting a salary of Rs. Rs.4000/- per month plus daily

allowance of Rs.50/- The Tribunal has assessed the monthly income of deceased as Rs.1500/- per month. Apart from the aforesaid statement, there is no evidence on record.

8. 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.
9. Perusal of the statement of the claimants would show that the deceased was driver by profession, therefore, it would be difficult to expect that his income would have been documented and it could have been proved by any other factum except making oral statement. Here in this case the statement of the employer of the deceased is on record who confirms the fact that at the time of accident, the deceased was working as driver and was being paid Rs.4000/- per month apart from daily allowance @ Rs.50/- per day. Reverting to the present case, since the accident has happened in the year 2004 as also taking into fact that the evidence which has been led by the claimants shows that the deceased was getting Rs.4000/- per month as driver, it do not appear to be exorbitant. Further, looking to the nature of job being done by the deceased, it cannot be said that he was not a skilled labour. Therefore, in the considered opinion of this Court, it would be appropriate if the notional income of the deceased is taken as Rs.4000/- per month or Rs.48,000/- per annum.

10. Perusal of the award shows 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 35 years as would be evident from postmortem report Ex.A-4. Considering the fact that the deceased was aged about 35 years at the time of accident, in view of the law laid down in ***Rajesh & others Vs. Rajbir Singh & others* reported in (2013) 9 SCC 54** which has been further reiterated by the Supreme Court in ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others* (2015) 6 SCC 347**, there would be further addition of 50% to the income of Rs.48,000/- towards future prospects which comes to Rs.24,000/- and thus total income is worked out to Rs.72,000/- (48000 plus 24000).

11. Coming to the deduction towards personal expenses, the claim petition was preferred by 4 claimants i.e., the widow and three minor children being dependents of deceased, therefore, there would be deduction of 1/4th as per the ***Sarla Verma Vs. D.T.C. (2009) 6 SCC 121***. After deducting one fourth towards personal expenses, the annual dependency comes to Rs.54,000/- (72,000 – 18,000). Since the deceased belonged to the age group of 31 to 35 years, according to multiplier table given in *Sarla Verma (supra)*, multiplier 16 would be applicable. Thus the total loss of dependency comes to Rs.8,64,000/- (54,000 x 16).

12. Under the conventional heads, the learned Claims Tribunal has awarded Rs.5000/- for loss of consortium to the wife; Rs.5000/- each i.e., total Rs.15000/- for loss of love and affection to 3 minor children and Rs. Rs.2000/- for funeral expenses. In the opinion of this court, the amounts awarded under conventional heads appears to be too meagre in view of the decision of Supreme Court in case of ***Asha Verman Vs. Maharaj Singh and others., reported in 2015 AIR SCW 3577*** and considering the age of the wife and the age of

children, I am inclined to award Rs.1,00,000/- on the head of loss of consortium; Rs. 50,000/- each i.e., Rs.1,50,000/- for love and affection to 3 minor children. Further, Rs.2000/- granted for funeral expenses is also enhanced to Rs.25,000/-. Thus the total compensation to be reassessed as follows:

S.No.	Heads	Calculation
(i)	Notional income @ Rs.4000/- per month	Rs.48,000/- per annum
(ii)	50% of (i) above to be added as future prospects	(Rs.48000 + 24000 = Rs. 72,000/-
(iii)	One fourth of (ii) deducted as personal expenses of the deceased	Rs. = 72000 – 18,000 = Rs. 54,000/-
(iv)	Compensation after multiplier of 16 is applied	Rs. 54,000 x 16 = Rs. 8,64,000/-
(v)	Loss of consortium	Rs. 1,00,000/-
(vi)	Loss of love and affection to 3 minor children @ Rs.50,000/- each	Rs. 1,50,000/-
(vi)	Funeral expenses	Rs. 25,000/-
	Total	Rs.11,39,000/-

Thus the total compensation will be Rs.11,39,000/-. After deducting Rs.2,24,000/- awarded by the tribunal, the enhancement would be Rs. 9,15,000/-. The said amount shall carry interest @ 6% per annum as awarded by the Tribunal from the date of filing of claim petition till the date of realisation.

13. In the result, the appeal is partly allowed. The claimants will be entitled to receive Rs. 9,15,000/- in addition to what is already awarded. So far as it relates to apportionment, each claimant son/daughter shall get Rs.2,00,000/- each and the remaining amount shall be disbursed to the wife.
14. 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