NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1003 of 2013

1. Jagbandhu, S/o. Dugaru, Aged About 48 Years, R/o. Village Salhepali, Post, P.S. & Tah. Gharghoda, Distt. Raigarh C.G.
2. Smt. Sukanti, W/o. Jagbandhu, Aged About 43 Years, R/o. Village Salhepali, Post, P.S. & Tah. Gharghoda, Distt. Raigarh C.G.

---- Appellants

Versus

1. Mohd. Hasib Ansari, S/o. Asumuddin Ansari, Aged About 51 Years, R/o. Jutmill, Raigarh, Post & P.S. Jutmill Chouk, Raigarh, Tah. & Distt. Raigarh, C.G.

3. Ramprasad Singh, S/o. Late Devnandan Singh, Aged About 56 Years, R/o. Village & Post- Kodatari, P.S. & Tah. Pusaur, Distt. Raigarh, C.G.

4. The Branch Manager, Reliance Insurance Company Ltd., Shop No. 412, 413, Fourth Floor, Ravibhawan, Jaistambh Chowk, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants	:	Mr. Roop Naik, Advocate
For Respondent No.2	:	Mr. Amit Sharma, Advocate
For Respondent No.3	:	Mr. S.S.Rajput with Ms. Renu Singh, Advocate

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Hon'ble Shri Justice Goutam Bhaduri

Order On Board

04.09.2015

1. The instant appeal is against the award dated 05.09.2013, passed in Claim Case No.169/2011, by the Court of learned First Additional Motor Accident Claims Tribunal, Raigarh (C.G.).

2. Briefly stated facts are that the claim petition was filed by the father and mother of the deceased namely Saroj on the ground that on 31.01.2011 at about 7:30 while he was alighting from the Bus bearing No.C.G.13-A 9901, before he could get down, the Bus moved all of a sudden, as a consequence of which, he fell down and the Bus ran over him, eventually

he died. It was stated that without giving any sign, all of a sudden, the Bus started moving which resulted into the accident. It was pleaded further that the deceased was working as Mason at the time of accident and he used to earn Rs.6,000/- per month. So on the different heads, an amount of Rs. 45,20,000/- was claimed.

3. The Driver of the Bus remained exparte. The Owner of the Bus, Non-applicant No.2, contended that at the time of accident, the Bus was driven by the driver who was holding a valid licence and the vehicle was insured with the Non-applicant No.3, Reliance Insurance Company Ltd., therefore, the entire liability has to be made good by the Insurance Company.

4. The Non-applicant No.3, Insurance Company, contended that at the time of accident, the Driver of the offending Bus, did not have a valid licence and therefore it resulted into breach of the policy and therefore, the Insurance Company would not be liable to pay the compensation.

5. The learned Claims Tribunal, on the basis of the evidence adduced, passed an award of Rs.1,92,000/- in favour of the claimants. The Tribunal while evaluating the evidence came to a finding that at the relevant time the offending Bus was being driven in rash and negligent manner had caused the accident. The said finding are not under any challenge, therefore, in absence of any challenge to such finding, the same are affirmed.

6. Learned counsel for the appellants/ claimants would submit that the Tribunal has wrongly assessed the income and the multiplier has also wrongly been applied. He relied on the case reported in ***2012 AIR SCW 3901*** in between *Amrit Bhanu Shali & Others v. National Insurance Company Ltd. & Ors.* and would submit that the multiplier has to be applied according to the age of the deceased. He further submits that under the conventional heads, meager amount has been awarded which too also requires enhancement.

7. Per contra, learned counsel appearing on behalf of the Respondent No.2 & 3 vehemently contended that the award is well merited according to the evidence which is placed on record, which do not require any reconsideration.

8. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.

9. The Tribunal has assessed the monthly income of the deceased to Rs.3,000/- per month. The father of the deceased namely Jagbandhu Nishad who was examined before the Court has stated that his son was working as Mason and used to earn Rs.200/- per day and at the time of accident, he was aged about 20 years. In the claim petition, the claimant stated that the deceased used to earn Rs.6,000/- per month. Admittedly, in this case, no document has been filed in support of the income.

10. 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.

11. Perusal of the statement of the claimants would show that the deceased belonged to unorganized sector, therefore, it will be difficult to expect that the income would have been documented and it could have been proved by any other factum except making oral statement. The date of accident in this case is 31.01.2011. Therefore, taking into account the wages of skilled labour, as it has been stated that the deceased was working as Mason which is not much diluted in the cross examination and considering the date

of accident i.e. 31.01.2011 and taking into consideration the increase in price of essential commodities during the period from 1994 to 2011, as also taking into the fact the wages which was prevailing for the skilled labour according to the 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 the deceased is assessed to Rs.4,500/- and thereby the annual income comes to Rs.54,000/-.

12. 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 18 years at the time of accident as would be evident from the postmortem report Ex.P-5. Considering the fact that the deceased was aged about 18 years 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*** reported in ***(2013) 9 SCC 54***, over and above the income of Rs.54,000/- and thereby 50% of amount comes to Rs.27,000/- and total income comes to Rs.81,000/-.

13. Now coming to the deduction towards personal expenses, the claim petition was preferred by the mother & father of the deceased, as the deceased was unmarried. Therefore, as per the law laid down in case of ***Sarla Verma Vs. Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121***, there would be deduction of 50% i.e. Rs.40,500/-.

14. The learned Tribunal has applied the multiplier of 10 taking into the age of father and mother. 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 though there may be number of dependents of the deceased whose age may be different, therefore, the age of the dependents has no nexus. Further in case of M. *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 (Smt) 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.

15. In view of the above, since the deceased was shown to be aged about 18 years as per postmortem report, the multiplier of 18 would be applicable. Thus, the total dependency comes to Rs.7,29,000/- (40,500 x 18).

16. Under the conventional heads, the learned Claims Tribunal has only awarded Rs.5,000/- for love & affection, Rs.5,000/- for loss of estate and Rs.5,000/- for funeral expenses. In the opinion of this Court, the amount so granted under the conventional heads also needs 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***. Therefore, considering the age of the deceased, I am inclined to award Rs.50,000/- on the head of loss of love and affection to the mother & father, Rs.25,000/- for loss of estate and Rs.25,000/- for funeral expenses. 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 half of (ii) deducted as personal expenses of the deceased.	Rs. 81000 – 40,500 = Rs. 40,500/-
(iv)	Compensation after multiplier of 18 is applied	Rs. 40,500 x 18 = Rs. 7,29,000/-

(v)	Loss of love and affection to the mother & father	Rs. 50,000/-
(vi)	For loss of estate	Rs. 25,000/-
(vii)	Funeral expenses	Rs. 25,000/-
	Total	**Rs. 8,29,000/-**

17. Thus, the total compensation will be Rs.8,29,000/-. After deducting Rs.1,92,000/- awarded by the tribunal, the enhancement would be Rs.6,37,000/-.

18. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 6,37,000/- in addition to what is already awarded by the Claims Tribunal.

19. 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.

20. The Registry is further directed to communicate the claimants in writing the "amount enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Devanagari language.

Sd/-
(Goutam Bhaduri)
Judge

Ashok