NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 31 of 2015

Rajao Yadav, S/o. Sonsai Yadav, Aged About 32 Years, R/o. Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.

---- Appellant

Versus

1. Arvind Kumar Singh, S/o. Motilal Yadav, Aged About 35 Years, R/o. Village- Deegha, P.S. Dhangaie, Tah. & Distt. Aara (Bihar)
2. Papu Kumar Yadav, S/o. Jaleshwar Yadav, Aged About 32 Years, R/o. Bhathori, P.S. & Tah. Basna, Distt. Mahasamund, C.G.
3. Shree Ram General Insurance Co. Ltd., Office at Maruti Heights, 4th Floor, Near Amanaka Railway Crossing, Raipur, Distt. Raipur C.G.

---- Respondents

And

MAC No. 32 of 2015

1. Smt. Panchvati Bai, W/o. Late Jamvat Nishad, Aged About 35 Years, R/o. Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.
2. Ku. Om Kumari, D/o. Late Jamvat Nishad, Aged About 17 Years, Minor Through- Mother Smt. Panchvati Bai, R/o Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.
3. Ku. Pinki, D/o. Late Jamvat Nishad, Aged About 15 Years, Minor Through- Mother Smt. Panchvati Bai, R/o Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.
4. Ku. Jayanti, D/o. Late Jamvat Nishad, Aged About 13 Years, Minor Through Mother Smt. Panchvati Bai, R/o Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.
5. Ku. Neha, D/o. Late Jamvat Nishad, Aged About 11 Years, Minor Through- Mother Smt. Panchvati Bai, R/o Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.
6. Ku. Sharda, D/o. Late Jamvat Nishad, Aged About 9 Years, Minor Through- Mother Smt. Panchvati Bai, R/o Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.

7. Ku. Kamini, D/o. Late Jamvat Nishad, Aged About 7 Years, Minor Through- Mother Smt. Panchvati Bai, R/o Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.

8. Ku. Meena, D/o. Late Jamvat Nishad, Aged About 5 Years, Minor Through- Mother Smt. Panchvati Bai, R/o Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.

9. Ku. Kusum, D/o. Late Jamvat Nishad, Aged About 3 Years, Minor Through- Mother Smt. Panchvati Bai, R/o Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.

10. Ku. Rohini, D/o. Late Jamvat Nishad, Aged About 1 Years, Minor Through- Mother Smt. Panchvati Bai, R/o Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.

11. Smt. Puratan Bai, W/o. Late Sukalu Nishad, Aged About 75 Years, R/o. Village- Gopalpur, P.S. Tumgaon, Tah. & Distt. Mahasamund, C.G.

---- Appellants

Versus

1. Arvind Kumar Singh, S/o. Motilal Yadav, Aged About 35 Years, R/o. Village- Deegha, P.S. Dhangaie, Tah. & Distt. Aara (Bihar).

2. Papu Kumar Yadav, S/o. Jaleshwar Yadav, Aged About 32 Years, R/.o Bhathori, P.S. & Tah. Basna, Distt. Mahasamund, C.G.

3. Shree Ram General Insurance Co. Ltd., Office at Maruti Heights, 4th Floor, Near Amanaka Railway Crossing, Raipur, Distt. Raipur, C.G.

---- Respondents

For Appellants	:	Mr. J.A.Lohani, Advocate
For Respondent No.3	:	Mr. Deepak Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02/09/2015

1. Both the appeals are being heard and decided together by this common order as they are arising out of the same accident.

2. M.A.(C) No.31/2015 is filed by Rajau Yadav, who is an injured. This appeal is arising out of the award dated 29.10.2014 passed in Claim Case No.40/2014 by the Second Additional Motor Accident Claims Tribunal, Mahasamund.

3. Likewise, M.A.(C) No.32/2015 is by Smt. Panchvati Bai, widow of the deceased Jamvat Nishad, 9 minor children and mother Puratan Bai which arises out of an award dated 29.10.2014 passed in Claim Case No.41/2014 by the Second Additional Motor Accident Claims Tribunal, Mahasamund.

4. The common facts which are involved in this case are that on 26.03.2013 at about 3:30 p.m. the injured Rajau Yadav and the deceased Jamvat Nishad were riding their Bicycle and were going to village Tumgaon from village Gopalpur. When they reached near Police Station Tumgaon, a Trailer Truck bearing No.C.G.13/D-2551, coming from the opposite side and driven by the original non-applicant Arvind Kumar Singh in rash and negligent manner dashed the injured and the deceased. The deceased namely Jamvat Nishad was dragged alongwith the vehicle. By impact of such accident, Rajau Yadav had sustained severe injuries for which he was referred to Balaji Super Speciality Hospital, Raipur and he was operated upon for the fracture and rod was inserted on her leg, whereas the other person Jamvat Nishad died on the spot.

5. Rajau Yadav, the injured, filed the Claim Case No.40/2014 before the Claims Tribunal and contended that he used to earn Rs.250/- per day and was a Mason and after the accident he has become permanently disabled and he is not able to perform his job regularly. Therefore under the different heads, an amount of Rs.5,00,000/- was claimed.

6. The dependents of Jamvat i.e. the widow, 9 minor children and mother preferred a Claim Case No.41/2014 wherein it was stated that the

deceased Jamvat Nishad, at the time of accident, was aged about 40 years and used to earn Rs.1000/- per day by growing and sale of vegetables in the field. Therefore, on the different heads, an amount of Rs.50,00,000/- was claimed.

7. The Non-applicant No.1, Driver, Arvind Kumar Singh and the Non-applicant No.2, Owner of the Truck, contended that the inflated amount has been claimed by the claimants in the claim petitions. It was further stated that on the date of accident, the vehicle was insured with the original Non-applicant No.3, Shree Ram General Insurance Company Ltd., therefore the Insurance Company would be liable to make good the amount of compensation.

8. The Non-applicant No.3, Insurance Company, contended that on the date of accident, the Truck was being driven without any valid permit or effective licence. It was further stated that for the accident, the injured and deceased themselves were liable. Consequently, the Insurance Company cannot be held liable to pay the compensation as there was a breach of terms of policy.

9. The learned Claims Tribunal after evaluating the pleadings and evidence on record came to a finding that at the relevant time of accident, the Truck bearing No.C.G.13/D-2551 being driven in a rash and negligent manner had caused the accident whereby Rajau had sustained injuries and Jamvat died. The said finding of rash and negligent driving of the Truck was not under any challenge by either of the parties, therefore, in absence of challenge to the same, the same is affirmed.

10. Mr. J.A.Lohani, learned counsel appearing on behalf of the claimants/ appellants in both the cases would submit that the Tribunal has failed to assess the income of deceased and the injured and failed to grant just compensation to the claimants. He would further submit that in case of injury to Rajau, despite the fact on record that he was operated and rod was inserted on his leg, the Tribunal was not able to appreciate the evidence and

further has failed to grant the proper compensation on the head of pain & suffering and future medical expenses etc. In respect of death of Jamvat Nishad, he would submit that in such case the claimant has stated that the deceased used to earn Rs.1000/- per day, but the Tribunal has assessed the income to Rs.36,000/- per year. He further submits that considering the number of claimants, the proper compensation has not been awarded and the notional income has also been wrongly assessed. Therefore, he submits that proper enhancement may be made in both the appeals.

11. Per contra, learned counsel appearing on behalf of the Insurance Company/ Respondent No.3 would submit that according to the evidence on record, the award passed by the Tribunal is well merited. He would submit that the assessment of income and the award as against the evidence which is on record do not require any reconsideration and the appeals are liable to be dismissed.

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

13. First the award in Claim Case No.40/2014 out of which the appeal M.A.(C) No.31/2015 has arisen is being considered. This appeal is by the injured Rajau Yadav. The Tribunal in this case has awarded Rs.80,000/- for medical expenses and Rs.20,000/- for loss of earning in future and Rs.5,000/- for pain & suffering. Perusal of the statement of injured would show that after the accident, he was admitted to the Hospital as his right leg was fractured. He further stated that initially he was operated at Mahasamund and thereafter he was referred to Balaji Hospital Raipur for operation wherein he was admitted till five days and thereafter he used to visit the Hospital per month. It is further stated that he is a Mason and used to earn Rs.250/- per day and after the accident, he had spent more than Rs.1,00,000/- in his treatment. Further the statement would reveal that after the operation, a rod was inserted from Thigh up-till Knee. The Tribunal after evaluating the

medical bills has awarded Rs.80,000/- for medical expenses. Perusal of the medical bills from Ex.P-9 to P-41 and the additional substitution of amount, it shows that the amount of Rs.80,000/- has been correctly granted by the Tribunal, which do not require any reconsideration.

14. With respect to the permanent disability, the disability certificate is placed as Ex.P-8 but the Doctor has not been examined. Considering the nature of injury and the fact that the rod was inserted, the Tribunal has awarded Rs.20,000/- for loss of income. In view of the evidence which is on record, the same amount of Rs.20,000/- as has been awarded also do not require any reconsideration. The award would show that the amount of Rs.5,000/- has been awarded for trauma and mental agony for the operation. Taking into the medical documents and the fact that the injured was admitted to the Hospital at Raipur, therefore, naturally he had to travel to Raipur and had to under go the treatment. Considering the same and the nature of injury, an amount of Rs.5,000/- granted for trauma and mental agony is enhanced to Rs.25,000/-. The award shows that no amount has been awarded for loss caused during the course of treatment. Considering the fact that the appellant was operated and was working as Mason naturally it would have lead to arrest of work during the period of treatment and therefore in view of the medical document which shows that the appellant had to under go treatment an amount of Rs.10,000/- is awarded for loss caused during the treatment. In his statement, the appellant has further stated that the rod has been inserted which according to the Doctor has to be taken out in future. Therefore, naturally there would be further medical expenses for taking out the rod. In such circumstances, an amount of Rs.25,000/- is awarded for future medical expenses. Thus, the amount of compensation is reassessed as under :

Sl. No.	**Heads**	**Calculation**
(i)	For medical expenses.	Rs. 80,000/-

(ii)	For loss of income.	Rs. 20,000/-
(iii)	For trauma and mental agony.	Rs. 25,000/-
(iv)	For loss of income during treatment.	Rs. 10,000/-
(iii)	For loss of future medical expenses.	Rs. 25,000/-
	Grand Total	**Rs. 1,60,000/-**

15. Thus, the total compensation is recomputed as Rs.1,60,000/-. After deducting Rs.1,05,000/- as awarded by the Tribunal, the enhancement would be Rs.55,000/-.

16. In the result, the appeal is partly allowed. The claimant will be entitled to the said sum of Rs. 55,000/- in addition to what is already awarded by the Claims Tribunal.

17. M.A.(C) No.32/2015 is for death caused of Jamvat Nishad. Perusal of the claim petition would show that the petition is preferred by the widow of Jamvat Nishad along with 9 minor children and mother. Thereby the claimants are numbered into 11. The wife of the deceased Smt. Panchvati Nishad stated that her husband used to grow and sell vegetables in retail and bulk and used to earn Rs.1000/- per day whereby all the family members were dependents. As against the statement, the Tribunal has assessed the income of the deceased to Rs.3,000/- per month. Admittedly in this case, no document has been placed on record in support of the case.

18. 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.

19. 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 on 26.03.2013. Therefore, taking into account the wages of skilled labour, as it has been stated that the deceased was growing vegetables in the field and used to sell the same, which is not diluted in the cross examination and considering the date of accident i.e. 26.03.2013 and taking into consideration the increase in price of essential commodities during the period from 1994 to 2013, 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/-.

20. 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 40 years at the time of accident according to the statement of the wife. Considering the fact that the deceased was aged about 40 years at the time of accident, there would be further addition of 30% 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 30% of amount comes to Rs.16,200/- and total income comes to Rs.70,200/-.

21. Now coming to the deduction towards personal expenses, the claim petition was preferred by the widow, 9 minor children and mother of the deceased, meaning thereby 11 persons. Therefore, as per the law laid down in case of ***Sarla Verma Vs. Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121***, as the dependency exceeds six, there would be deduction of 1/5th which comes to Rs. 14,040/-. Therefore, the dependency comes to Rs.56,160/- (70,200–14,040). Further, the age of the deceased was stated

to be 40 years, therefore, the multiplier 15 would be applicable. Thus, the total dependency comes to Rs.8,42,400/- (56,160 x 15).

22. Under the conventional heads, the learned Claims Tribunal has awarded Rs.1,00,000/- as consolidated amount for loss of consortium and for love & affection and care to the minor children, Rs.5,000/- for loss of estate and Rs. 10,000/- for funeral expenses. In the opinion of this Court, the amount so granted under the 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***. Therefore, considering the age of the widow of the deceased, I am inclined to award Rs.1,00,000/- to the wife for loss of consortium, Rs.25,000/- each to the minor children for loss of love & affection and care, Rs.25,000/- for loss of love & affection to the mother, 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)	30% of (i) above to be added as future prospects	(Rs. 54,000 + 16,200 = Rs. 70,200/-
(iii)	1/5th of (ii) deducted as personal expenses of the deceased.	Rs. 70,200 – 14,040 = Rs. 56,160/-
(iv)	Compensation after multiplier of 15 is applied	Rs. 56,160 x 15 = Rs. 8,42,400/-
(v)	For loss of consortium to the wife.	Rs. 1,00,000/-
(vi)	For loss of love and affection to 9 minor children @ 25,000/- each. (25,000 x 9 = 2,25,000/-)	Rs. 2,25,000/-
(vii)	For loss of love & affection to the mother.	Rs. 25,000/-
(viii)	For loss of estate.	Rs. 25,000/-

(ix)	For funeral expenses.	Rs. 25,000/-
	Total	**Rs. 12,42,400/-**

23. Thus, the total compensation will be Rs.12,42,400/-. After deducting Rs.5,47,000/- awarded by the tribunal, the enhancement would be Rs.6,95,400/-.

24. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs.6,95,400/- in addition to what is already awarded by the Claims Tribunal.

25. Now coming to grant of interest, the Supreme Court in ***Asha Verman & others V. Maharaj Singh & others (supra)*** held at 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.

26. So far as it relates to apportionment, out of the total award of Rs. 12,42,400/- it is directed that an amount of Rs.50,000/- each shall be deposited in the name of each claimant children who are numbering into 9 in the form of Fixed Deposit in any Nationalised Bank initially for a period of 3 years. Rs.75,000/- shall be given to mother of the deceased and the remaining amount of award shall be disbursed to the widow of deceased.

27. 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