NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 61 of 2012

1. Smt. Ahilya, Wd/o. Mohan Lal Dadsena, aged about 27 years.
2. Smt. Gayabai, Wd/o. Shri Bihari Dadsena, aged about 60 years.

   Both are R/o. Village- Khemda, Post – Thana and Tahsil- Basna, District Mahasamund (C.G.)

---- Appellants

Versus

1. Setkumar Sidar, S/o. Darji Sidar, aged about 24 years, By caste Gond, R/o. Village – Birjabhantha, Post – Nogadi, Thana & Tahsil – Basna, District Mahasamund (C.G.) (Driver of Tractor).
2. Devlal Deewan, S/o. Tulsiram, aged about 33 years, R/o. Village – Udela, Post – Bhanwerpur, Thana and Tahsil Basna, District Mahasamund (C.G.) (Owner of Vehicle Tractor).
3. Branch Manager, Reliance General Insurance Company Ltd., Branch Office Ravi Bhawan, Shop No.412-413, Fourth Flour, Jaystambh Chowk, Raipur, District Raipur (C.G.)

---- Respondents

For Appellants	:	Mr. Sumit Shrivastava, Advocate.
For Respondent No.3.	:	Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

10/08/2015

1. Challenge in this appeal is to the award dated 30.04.2011, passed in Claim Case No.78/2010, by the Motor Accident Claims Tribunal, Mahasamund, District Mahasamund, whereby as against the claim made for Rs.22,90,000/-, an award of Rs.96,000/- was passed.

2. The appeal is by the claimants.

3. Briefly stated facts of the case are that a claim petition was filed by the widow and mother of the deceased namely Mohan Lal dadsena alleging that on 10.03.2010, while the deceased was going on his cycle from village Kolihadevri to his village Khemda, another vehicle i.e. the tractor bearing No. C.G.-04-DB-6315 and trolley No.C.G.-04-DB-6316, driven in rash and negligent manner by the original non-applicant No.1, Set Kumar Sidar, dashed the deceased, whereby he died. It was stated that at the time of the accident, the vehicle was driven in rash and negligent manner, which resulted into accident. The claimants contended that the deceased was Mason and was aged about 30 years and used to earn Rs.6,000/- per month and the entire family was dependent upon him, therefore, under the different heads, an amount of Rs.22,90,000/- was claimed for.

4. The non-applicant No.1 and 2, the driver and the owner of the offending vehicle refuted the claim averments and stated that no accident had occurred by the offending vehicle and neither any injury was caused to the deceased. Further it was contended that on the date of accident, the driver of the tractor was holding valid driving license and therefore, the insurer of the vehicle is liable to make good the amount.

5. The insurance company, the original non-applicant No.3, contended that no accident had happened with the offending vehicle. It was further submitted that because of the negligence of the deceased himself, the accident had happened and he was contributory

negligent for the same. It was further stated that at the time of the accident, the driver of the offending vehicle was not having valid driving license and therefore, the vehicle was being driven in contravention to the insurance policy. In a result, the insurance company is not liable to make good the compensation.

6. The learned Claims Tribunal after evaluating the facts and the evidence has passed an award of Rs.96,000/- and has held that the deceased was liable for contributory negligence to the extent of 50%.

7. Learned counsel for the appellants would submit that despite the eye-witness, who has categorically proved the accident, the learned Tribunal has wrongly come to the finding about the contributory negligence on the part of the deceased. He further submits that the amount of notional income of Rs.15,000/- by the Tribunal is also too meager as the accident was of 2010, consequently, just compensation has not been awarded.

8. Per contra, learned counsel appearing on behalf of the insurance company supported the award and would submit that the award is well merited, which do not call for any interference.

9. I have heard the learned counsel for the parties at length, perused the documents and the evidence on record.

10. The primary question which falls for consideration as to whether the deceased was liable for contributory negligence. The claimants have examined one eye-witness, Jaldhar Mali (AW-2), who also

sustained the injuries. According to this witness, he was following the deceased, Mohan Lal Dadsena and he was also on the cycle. This witness has stated that they were going by the side of the road at that time, a tractor which was coming from village Ganekera alongwith trolley came at a high speed, driven in negligent manner and dashed the deceased. The witness has further stated that the deceased was at front of them and after dashing the deceased, they were also hit by the tractor and trolley. This witness has also sustained injuries alongwith his brother. He further submits that at the time of the accident, the tractor was being driven by the original non-applicant No.1, Set Kumar in uncontrolled manner. In cross-examination, the witness has stated that he subsequently came to know the name of the deceased was Mohan Lal, meaning thereby that he was not known to the deceased. This witness has further stated that he was at a distance of five arms from the deceased when the accident happened. It has also come in evidence that the tractor was coming from apposite direction and the road wherein the accident happened it has a 10 feet of width. He further denied the suggestion that the deceased was driving his cycle at the middle of the road. The witness has further stated that while the accident happened, one more person was sitting at the engine of the tractor.

11. Now if we examine the criminal records, which are placed on record and exhibited as Ex.P/1, it shows that on 10.03.2010 itself, after sometime of accident, FIR was registered. In the said FIR, it is stated that while they were moving in the cycle, when they reached near Ganekera road, a tractor coming from opposite direction driven

in rash and negligent manner, dashed the cycle. The said FIR (Ex.P/1) was made by one of the injured. So the conjoint reading of the statement of the eye-witness and the document Ex.P/1, FIR, appreciating the evidence it can not be inferred that the deceased was responsible for contributory negligence and was driving at the middle of the road. On the contrary, evaluation of the statement of the eye-witness, would show that the offending tractor was entirely responsible for the accident. Therefore, on a careful consideration of the evidence, I am of the opinion that the finding arrived at by the learned Tribunal on contributory negligence can not be sustained and it is accordingly set-aside.

12. Now coming to other question, which comes for consideration is to the quantum of compensation. The Tribunal in its award at para-18 has assessed the income of the deceased to Rs.15,000/- yearly. Ahilya Bai (PW-1), the wife of the deceased has stated in his deposition that at the time of the accident, her husband was doing the job of Mason and used to earn Rs.200/- per day. This witness has further stated that after the death of her husband, she alongwith her mother-in-law i.e. the mother of the deceased has to do the job of labour and before the accident, they were not required to go for job of labour as her husband used to maintain them. She has stated that at the time of the accident, the age of the deceased was 30 years.

13. Admittedly, in this case, no documents was placed on record in support of the income. 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.

14. Perusal of the statement of the claimants would show that the deceased belonged to unorganized sector, therefore, it would 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. This fact also cannot be ignored that the accident in this case has taken place in the year 2010. The claimants have stated that the deceased was working as Mason. Therefore, taking into account the wages of skilled labour which was ranging from Rs. 150 to 200 during the period 2010-2011 and reverting to the present case, as the accident has happened in the year 2010, considering the increase in price of essential commodities during the period from 1994 to 2010, 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.4000/- per month would be proper in the facts and circumstances of the case. Consequently, the notional income of the deceased is assessed to Rs.4,000/- and thereby the annual income comes to Rs.48,000/-.

15. 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 30 years as would be evident from postmortem report Ex.P-6. Considering the fact that the deceased was aged about 30 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.48,000/- and thereby 50% of amount comes to Rs.24,000/- and total incomes comes to Rs.72,000/-.

16. Now coming to the deduction towards personal expenses, the claim petition was preferred by 2 persons i.e., wife & mother of the deceased, therefore, 1/3 would be deducted towards personal expenses as per the law laid down in case of ***Sarla Verma V. D.T.C. (2009) 6 SCC 121.*** Therefore after deducting 1/3 towards personal expenses, the annual dependency comes to Rs.48,000/- (72,000 – 24,000). Since the deceased belonged to the age group of 26 to 30 years, according to multiplier table given in *Sarla Verma (supra)*, multiplier of 17 would be applicable. Thus the total dependency comes to Rs.8,16,000/- (48,000 x 17).

17. Under the conventional heads, the learned Claims Tribunal has only awarded Rs.2000/- for funeral expenses, Rs.20,000/- for loss of love and affection. The learned Claims Tribunal has not awarded any amount towards loss of consortium to the wife. Taking into the age of the wife and following the law laid down in case of ***Asha Verman Vs. Maharaj Singh and Ors., reported in 2015 AIR SCW***

3577, Rs.1,00,000/- is granted for loss of consortium to the wife. Further an amount of Rs.50,000/- is awarded for loss of love and affection to the mother. The Tribunal has failed to award any amount towards loss of estate, therefore, considering the age of the deceased and the avocation carried out by him, Rs.25,000/- is awarded for loss of estate. The amount of Rs.2,000/- granted for funeral expenses is also appears to be too meager, therefore, the same is enhanced to Rs.25,000/-. Thus the total compensation to be reassessed is as follows :-

S.N.	Heads	Calculation
(i)	Notional income @ Rs.4000.00 per month	Rs.48,000.00 per annum
(ii)	50% of (i) above to be added as future prospects	(Rs.48000 + 24000 = Rs.72,000.00
(iii)	1/3 of (ii) deducted as personal expenses of the deceased	Rs.72000 – 24,000 = Rs. 48,000.00
(iv)	Compensation after multiplier of 17 is applied	Rs. 48,000 x 17 = Rs. 8,16,000.00
(v)	For loss of consortium	Rs. 1,00,000.00
(vi)	Loss of love and affection to the mother	Rs. 50,000.00
(vii)	Loss of estate	Rs. 25,000.00
(viii)	Funeral expenses	Rs. 25,000.00
	Total	**Rs.10,16,000.00**

18. Thus the total compensation is recomputed as Rs.10,16,000/-. After deducting Rs.96,000/- awarded by the tribunal, the enhancement would be Rs. 9,20,000/-.

19. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 9,20,000/- in addition to what is

already awarded. There will be no deduction on the head of contributory negligence as has been held in the foregoing paras.

20. 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.

21. So far as it relates to apportionment, out of total dependency of Rs.8,16,000/-, the mother of deceased i.e. the appellant No.2 will get Rs.3,00,000/- plus Rs.50,000/- granted towards loss of love and affection i.e., total Rs.3,50,000/-. The remaining amount shall be disbursed to the widow of deceased, the appellant No.1.

22. 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.

23. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Balram