**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

## M.A.(C) No. 885 of 2013

1. Smt. Ranjana, W/o. Late Shailendra Singh Thakur, Aged About 32 Years.

2. Ujjawal Singh, S/o. Late Shailendra Singh Thakur, Aged About 11 Years,

3. Ku. Yukta Singh, D/o. Late Shailendra Singh Thakur, Aged About 6 Years,

   Appellant No.2 & 3, Minors, Through- Legal Guardian, Mother Smt. Ranjana Singh, W/o. Late Shailendra Singh Thakur, R/o Behind Sohega Mandir, Brahmin Para, Raipur, P.S. Azad Chowk, Raipur C.G.

**----Appellants**

**Versus**

1. Vijay Vishwakarma, S/o. Konda Vishwakarma, Through- Mulchand Khandelwal, Sai Manglam Vyapar Vihar Colony, Bilaspur, Tah. and Distt. Bilaspur C.G.

2. Mulchand Khandelwal, Sai Manglam Vyapar Vihar Colony, Bilaspur, Tah. and Distt. Bilaspur C.G.

3. The United India Insurance Co. Ltd., Thru- Divisional Manager, United India Insu. Co. Ltd., Kachhari Chowk, Raipur, Tah. and Distt. Raipur C.G.

**---- Respondents**

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| For Appellants | : | Mr. Y.C. Sharma, Advocate with<br>Mr. Govind Dewangan, Advocate. |
| For Respondent No.1 & 2 | : | None present. |
| For Respondent No.3. | : | Mr. Dashrath Gupta, Advocate |

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order On Board**

**03/09/2015**

1. Challenge in this appeal is to the award dated 09.04.2013, passed in Claim Case No.37/2013, by the 5th Additional Motor Accident Claims Tribunal, Raipur, District Raipur, whereby as against the claim made for Rs.47,45,000/-, an award of Rs.3,61,000/- was passed.

2. The appeal is by the claimants.

3. Briefly stated facts of the case are that a claim petition was preferred by the widow and two minor children alleging that on 07.10.2011, the claimants alongwith the deceased Shailendra Singh were going to Bilaspur from Raipur in a Maruti Car No. C.G.-07-ZD-9198, when they reached near village Bhumiya, another vehicle bearing No. C.G.-10-F-0867, driven by the original non-applicant No.1, dashed the said Maruti Car and as a result of that, the driver of the Maruti vehicle, Shailendra Singh Thakur sustained severe injures an died, whereas, the other occupants of the car, the claimants and others sustained severe injuries. It was stated that at the time of the accident, Shailendra Singh Thakur used to ply a minibus and also used to run printing press, whereby an amount of Rs.25,000/- per month was being earned by the deceased. Consequently under different heads, an amount of Rs.47,45,000/- was claimed for.

4. The driver and the owner of the offending vehicle i.e. the respondent No.1 and 2 remained exparte before the Court below.

5. The insurance company in its reply submitted that at the relevant time of the accident, the driver of the Maruti car was not holding a valid driving license and the vehicle was over loaded with 5 to 7 persons, consequently, the driver could not control the car, which resulted into accident. Therefore, the driver of the car and the occupants there on were liable for contributory negligence. It was further stated that on the date of accident, the vehicle was not holding a valid permit and thereby it resulted into breach of policy. In a consequence, the insurance company is not liable to make good the compensation.

6. The learned Claims Tribunal after appreciating the entire evidence on record came to a conclusion that at the relevant time, the offending vehicle i.e. Inova Car bearing No. C.G.10-F-0867 was being driven in rash and negligent manner and dashed the Maruti car. There is no challenge to such finding by the respondents and in absence of challenge to the same, the finding arrived at by the learned Tribunal are affirmed.

7. Learned counsel for the appellants would submit that the learned Claims Tribunal has failed to assess the notional income as against the evidence adduced by the appellants. He further submits that according to the statement of claimant, the deceased was earning Rs.10,000/- per month by running printing press and used to ply a minibus through the driver. He would further submits that on the conventional head, meager compensation has been awarded, which

needs suitable enhancement.

8. Per contra, learned counsel appearing on behalf of the insurance company supported the award. It is contended that since there is no evidence on record to accept the oral statement about the income of the deceased, therefore, assessment of income to Rs.3,000/- per month 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 only question which falls for consideration in this appeal is to the quantum of compensation. The claimant wife, Smt. Ranjana Thakur in her statement has stated that at the time of the accident, her husband used to run printing press and also used to ply a minibus through the driver and thereby was earning Rs.25,000/- per month. In cross-examination, it was stated that though the averments are made about the income but no documents have been placed either in respect of the vehicle, which was being plied or of printing press. Only one document in respect of purchase of printing press, Ex.P/10 is produced and no income tax return or like nature has been placed on record. The Tribunal has assessed the monthly income of the deceased to Rs.3,000/- per month. Admittedly in this case no documents has been placed on record to substantiate the fact that the deceased was running printing press and was plying minibus.

11. Therefore, to arrive at a 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.

12. Perusal of the statement of the wife would show that she admits that the document pertaining to running of printing press and plying of minibus has not been placed on record, however on suggestion being given that the deceased do not have any printing press or any minibus, it was denied. The wife has stated that her husband was earning Rs.25,000/- per month, therefore, it would be difficult to accept that the income of the deceased would be Rs.25,000/- per month. In the instant case even if the statements are ignored, considering 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 according to the second schedule, in the opinion of this Court, the notional income of Rs.4,500/- 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/-.

13. Reading of the award would show that the Tribunal has not added any sum towards future prospects. Here in the instant case, the wife of the deceased has stated that the age of her husband was 42 years, therefore, considering the fact that the deceased was age

group of 42 years at the time of the 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 the 30% of amount comes to Rs.16,200/- and total income comes to Rs.70,200/-.

14. Now coming to the deduction towards personal expenses, the claim petition was preferred by 3 persons i.e. widow and two minor children of the deceased. Consequently, following the principles laid down in case of ***Sarla Verma V. D.T.C. (2009) 6 SCC 121,*** deduction of 1/3 is permitted, which comes to Rs.23,400/-. Therefore, after deducting 1/3 towards personal expenses, the annual dependency comes to Rs.46,800/- (70,200 minus 23,400/-). Since the deceased was age group of 41 to 45 years, therefore, multiplier 14 would be applicable in this case. Thus the total dependency comes to Rs.6,55,200/- (Rs.46,800 x 14).

15. Under conventional head, the Claims Tribunal has awarded Rs.5,000/- towards funeral expenses. Rs.5,000/- for loss of estate. Rs. 5,000/- for loss of consortium to the wife and Rs.10,000/- for love and affection. In the opinion of this Court, the amount awarded under conventional heads also need to be reassessed in view of law laid down in case of ***Asha Verman Vs. Maharaj Singh and Ors., reported in 2015 AIR SCW 3577.*** Therefore, I am inclined to award Rs.1,00,000/- for loss of consortium to the wife. For loss of love and affection to the children Rs.50,000/- is awarded to each, thereby Rs.1,00,000/- is awarded for love and affection to the minor

children. The amount of Rs.5,000/- awarded towards loss of estate is enhanced to Rs.50,000/-. The amount of Rs.5,000/- granted for funeral expenses is further enhanced to Rs.25,000/-. 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) | One third of (ii) deducted as personal expenses of the deceased. | Rs. 70,200 – 23,400 = Rs. 46,800/- |
| (iv) | Compensation after multiplier of 14 is applied. | Rs. 46,800 x 14 = Rs. 6,55,200/- |
| (v) | Loss of consortium to the wife. | Rs. 1,00,000/- |
| (vi) | Loss of love & affection to the children | Rs. 1,00,000/- |
| (viii) | Loss of estate. | Rs. 50,000/- |
| (ix) | Funeral expenses. | Rs. 25,000/- |
| | Total | **Rs. 9,30,200/-** |

16. Thus the total compensation is recomputed as Rs.9,30,200/-. After deducting Rs.3,61,000/- as awarded by the Tribunal, the enhancement would be Rs.5,69,200/-.

17. In the result, the appeal is allowed in part. The appellants will be entitled to the said sum of Rs.5,69,200/- in addition to what is already awarded by the Claims Tribunal.

18. Now coming to the 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.

19. So far as it relates to apportionment, out of total award Rs.9,30,200/-, the children i.e. appellant No.2 & 3 will get Rs.2,50,000/- & Rs.2,50,000/- each, which shall be deposited in the name of appellant No. 2 & 3 in the form of fixed deposit in any Nationalised Bank initially for a period of 5 years. The remaining amount shall be disbursed to the widow of deceased, the appellant No.1.

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.

21. No order as to costs.

**Sd/-**
**(Goutam Bhaduri)**
Judge

Balram