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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 324 of 2011

Mus. Varsha Shrivastava W/o Late Brijendra Shrivastava, aged about 32 years, R/o Hemunangar, Bilaspur Distt. Bilaspur (C.G.)

---- Appellant

Versus

1. Brijesh Kumar, S/o Ganesh Geer aged about 30 years, R/o Qtr. No. 63/3 Dharampur Gewara District Korba (C.G.)

2. Smt. Kholendra Kumari Chandra, W/o Vinod Kumar Chandra, aged about 40 years, R/o Bartunga, P.O. Dewarghat Tahsil Dhabhara, District Janjgir Champa (C.G.)

3. The Branch Manager, United India Insurance Company Limited, Bilaspur, Tahsil and District Bilaspur (C.G.)

---- Respondents

For Appellant/Claimant	:	Mr. Pritam Tiwari, Advocate.
For Respondent No.3/ Insurance Company	:	Mrs. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order

04/03/2016

Heard.

1. This is claimant's appeal for enhancement of the compensation awarded by the Claims Tribunal.

2. In an unfortunate incident of accident which occurred on 08.01.2008, the husband of the appellant, who was driving an auto-rickshaw collided with bolero vehicle coming from the opposite side driven by respondent No.1. In the accident, the husband of the

appellant died. The matter was reported to the police, criminal case was registered and the dead body was sent for postmortem. The appellant filed an application under Section 166 of the Motor Vehicle Act for grant of compensation against the owner, driver as also against the Insurance Company as the offending vehicle was insured. The claimant raised claim compensation of Rs.16,70,000/-.

The owner/respondent No.1 and driver/respondent No.2 despite service, did not appear and remained ex-parte.

3. The respondent No.3/Insurance Company denied its liability and stated that the owner of auto-rickshaw is also necessary party and that the claim is exaggerated.

4. On the basis of the pleadings and evidence on record, learned Claims Tribunal held that as the deceased was guilty of contributory negligence, the appellant would be entitled only to the extent of 50% of the compensation. The total amount of compensation was computed as Rs.3,98,000/- and the appellant was granted compensation of Rs.1,99,000/-, Rs.10,000/- towards loss of consortium and Rs.3,000/- towards funeral expenses.

5. Learned counsel for the appellant argued that the finding with regard to contributory negligence is illegal as it is based on the statement of one of the passenger of auto-rickshaw recorded in another claim case. Learned counsel for the appellant argued that the aforesaid witness namely Kandhi was not examined as witness by any of the party in the present claim case. His statement could not be relied upon to arrive at the finding of contributory negligence in the absence of there being any other evidence on record with regard to contributory negligence particularly when the eyewitness, in the present case, namely Majhala has clearly stated that the accident was caused due to rash and negligent driving of bolero vehicle, which dashed against the auto-rickshaw driven by deceased Brijendra Kumar Shrivastava, husband of the appellant.

It is next contended that according to the case of the appellant, the age of her husband was 34 years and in the postmortem report also, the age has been estimated as 35 years but the Claims Tribunal has recorded a vague finding and thereby wrongly applied multiplier of 15 whereas it ought to be 16 relying upon **Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & anr, AIR 2009 SC 3104**.

6. Third submission of learned counsel for the appellant is that nothing has been granted towards loss of future prospects. Relying upon the decision in the case of **Smt. Savita v. Bindar Singh & others, 2014 AIR SCW 2053**, it is submitted that even in case of self-employment, an addition to the extent of 30% has to be granted and increase of 30% in the total income over a period of time if the victim were live and worked, has to be applied for calculating the amount of compensation.

The last submission of learned counsel for the appellant is that towards funeral expenses, very meager amount has been awarded. Nothing has been provided for loss of estate. Towards loss of consortium also very inadequate amount has been awarded.

7. On the other hand, learned counsel for the Insurance Company opposes the prayer and submits that it was permissible for the Tribunal to take into consideration every material on record. The Insurance Company placed on record certified copy of statement of Kandhi, the passenger traveling in auto-rickshaw, recorded in another claim application filed by Kandhi, which arose out of the same accident. Kandhi was in the best position to depose as to in what manner the accident took place and who was responsible.

He further submits that as Kandhi's presence in the auto-rickshaw has not been disputed by any of the parties, the finding of contributory negligence, is justified on law and facts both. On the aspect of multiplier, learned counsel for the Insurance Company submits that as per Sarla Verma's case, for the age group of 36 to 40, multiplier would be 15 which has been rightly applied in the present case because there is no clinching evidence of the exact age and looking to the material on record, the Claims Tribunal has rightly estimated the age of the deceased between 35 to 40.

8. In respect of claim towards future prospects, it is submitted that the deceased was an auto-rickshaw driver and not in any fixed pay. Therefore, in such a case, there is no rational basis for increase on future prospects in the matter of awarding compensation.

9. Lastly, it is submitted that towards loss of consortium Rs.10,000/- has been rightly provided as ordered in the case of Sarla Verma (supra).

10. I have heard learned counsel for the parties and perused the record.

11. In order to come to the conclusion that present is a case of contributory negligence, learned Claims Tribunal has relied upon a statement of one Kandhi, said to be passenger of the auto-rickshaw. It is this statement which has been made the sole basis to come to the conclusion that present is a case of contributory negligence in as much as the drivers of both the vehicles were driving the vehicles rashly and negligently with high speed, resulting in collusion and death of the appellant's husband. The said witness Kandhi has not been examined in the present case. He was not available for cross-examination by the appellant in the present case so as to test the veracity of his statement.

In the present case, Majhala has been examined as eyewitness, who has clearly deposed that accident resulted due to rash and negligent driving of bolero vehicle, which dashed against the auto-rickshaw driven by Brijendra, who died in the accident. This witness has emphatically stated that he was eyewitness to the incident. The suggestion given in his cross-examination that he did not see any accident, has been clearly denied. There is no reason to disbelieve the statement of this particular witness. Therefore, in the considered opinion of this Court, learned Claims Tribunal clearly fell in error in taking into consideration the statement recorded in another case and ignoring the statement of eyewitness in the present case to record a finding of contributory negligence. Except the statement of Kandhi recorded in other claim application, there is no evidence recorded in the present case, there is no evidence led by the respondents nor any other material reflected from other record to come to the conclusion that the deceased Brijendra was also contributed to accident by his negligency. Therefore, in these circumstances, the finding of contributory negligence cannot be sustained in law and is set aside.

12. As far as the multiplier is concerned, the appellant in her claim application stated the age of the deceased as 34 years. In the postmortem report, the age of the deceased was estimated as 35 years. There is no other material led by the respondents nor anything borne out from the record to show that the deceased Brijendra was aged more than 35 years. Therefore, in these circumstances, application of 15 as multiplier would not be proper in view of the judgment of the Supreme Court in the case of **Sarla Verma (supra),** wherein in respect of age group of 31 to 35 years, multiplier of 16 has been applied and only when there is material to show that the estimated age would be between 36 to 40 years, application of 15 as multiplier would be justified. Therefore, in the present case, the proper multiplier would be 16 and not 15.

13. While calculating compensation in the present case, looking to the age of the deceased and that he was a skilled person i.e. driver of an auto-rickshaw, increase in income as future prospects to the extent of 30% would be justified in law in view of what has been held by the Supreme Court in the case of **Santosh Devi v. National Insurance Company Ltd. and others, AIR 2012 SC 2185** held as follows :

> "14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special

circumstances. In our view, it will be naive to say that the wages or total emoluments/ income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

15. It is also not possible to approve the view taken by the Tribunal which has been reiterated by the High Court albeit without assigning reasons that the deceased would have spent 1/3rd of his total earning, i.e., Rs. 500/-, towards personal expenses. It seems that

> the Presiding Officer of the Tribunal and the learned Single Judge of the High Court were totally oblivious of the hard realities of the life. It will be impossible for a person whose monthly income is Rs.1,500/- to spend 1/3rd on himself leaving 2/3rd for the family consisting of five persons. Ordinarily, such a person would, at best, spend 1/10th of his income on himself or use that amount as personal expenses and leave the rest for his family."

Applying the aforesaid principles in the case of **Smt. Savita (supra),** it was held that -

> "**18.** Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 percent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

14. In view of the aforesaid legal position, the claimant is entitled to increase towards future prospects to the extent of 30% in the matter of award of compensation.

15. As far as compensation towards loss of consortium is concerned, the Claims Tribunal has rightly awarded Rs.10,000/- in view of the judgment of the Supreme Court in the case of Sarla Verma and also awarded Rs.10,000/- towards loss of estate and only Rs.3000/- has been awarded towards funeral expenses applying to the decision of the case of Sarla Verma's.

16. On the basis of above analysis, the annual income increase on future prospects and after deducting 1/3rd as personal expenses, monthly income comes out to Rs.2,600/-. The annual income therefore, would be Rs.2600/- x 12 =31200/- which multiplied by multiplier of 16, comes to Rs.4,99,200/-. Adding to it further amount of Rs.20,000/- towards loss of consortium, loss of estate and funeral expenses, the total compensation amount works out to Rs.5,19,200/- which the claimant is held entitled @ 7.5% from the date of filing of application.

17. In the result, the appeal is allowed and the claimant is held entitled to total compensation of Rs.5,19,200/- with the interest as stated above. The amount which has already been paid shall be adjusted. All other terms and conditions of award shall remain the same.

Sd/-

(**Manindra Mohan Shrivastava)**
J U D G E

Rekha