NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 965 of 2011

1. Praveen Paul S/o. Paul Poulush, Aged about 52 years,
2. Adhish Paul S/o. Praveen Paul, Aged about 22 years,
3. Priyesh Paul S/o Praveen Paul, Aged about 20 years,

All R/o. House No. MIG -538, Padmanabhpur, Durg, Tahsil and District Durg (C.G.)

---- Appellant/(Claimant)

Versus

1. Kartar Singh S/o. Surjan Singh, Aged about 34 years, R/o. Ganjpara, Bandha, Talab Para, Durg, Police Station, Tahsil and District Durg (C.G.)
2. Jagdish Sharma S/o. Shri Dharmchandra Sharma, Aged about 40 years, R/o. Ganjpara, near Kabristan Durg, Police Station Tahsil and District Durg (C.G.)
3. National Insurance Company Ltd. through Address First Floor Gill Complex, Near Gurudwara, Station Road Durg, District Durg (CG) Through Divisional Manager National Insurance Company Ltd., Akash Ganga Complex Supela, Bhilai Nagar, District Durg (CG)

---- Respondents

For Appellants	:	Mr. C.K Sahu, Advocate
For Respondents No.1 and 2	:	None.
For Respondent No.3	:	Mr. B.N. Nande, Advocate

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

Per P. Diwaker, J.

19.07.2017

1. This appeal filed by the claimants/appellants arises out of the award dated 5.7.2010 passed by the Motor Accident Claims Tribunal, Durg District Durg (henceforth 'the Claims Tribunal') in Claim Case No.

33/09, whereby in a death case compensation of Rs.14,14,500/- has been awarded to the claimants.

2. Facts of the case, in brief, are that deceased Smt. Veena Paul was posted as Training Officer Grade-II in Government I.T.I, Durg and getting monthly salary of Rs.20,073/-. On 16.1.2009 said Smt. Veena Paul was riding her scooter bearing registration No. CG07-ZJ-1501 and going to her workplace from Ganjpara, Durg and all of a sudden, the truck bearing registration number CG07-ZC-1675, being driven in rash and negligent manner by respondent No.1 herein, gave a dash to her scooter as a result of which she received grievous injuries and died instantaneously. Report of the accident was lodged in the police station Durg based on which offence under Section 304A IPC was registered under FIR No.39/2009 against the respondent No.1. A claim application was filed by the claimants/appellants i.e. husband & children of deceased, claiming compensation to the tune of Rs.48,87,592/- for the accidental death of deceased *inter alia* pleading that the deceased was 50 years old at the time of accident, he was earning Rs.20,073/- per month and they were dependent on her and on account of her sudden demise, they have suffered loss of income and therefore they are entitled for compensation as claimed by them.

3. Respondent No.1-driver filed his written statement denying the averments made in the claim application and stated that the deceased herself was responsible for the accident as she was riding the scooter rashly and negligently. Respondent No.2-owner also filed separate written statement and stated that the offending vehicle was insured with the respondent No.3 and if any liability is determined then the

insurance company is under obligation to satisfy the same being the insurer of the offending vehicle.

4. Respondent No.3 also filed its written statement and also denied the averments made in the claim petition. It has been stated by the insurance company that claimant No.1 is in government service, whereas the claimant No.2 & 3 are major and therefore it cannot be said that they were dependent on the deceased. The decesaed herself was responsible for the accident. The claimants have made exaggerated claim. It has also been stated that the driver of the offending vehicle was not possessing valid and effective driving license at the time of accident and thus the vehicle had been plied in violation of the terms and conditions of the insurance policy. On the aforesaid grounds, therefore, the insurance company is not liable to pay any compensation.

5. By the impugned award, the Clams Tribunal has awarded compensation of Rs.14,14,500/- along with interest at the rate of 7% per annum to the claimants. It is this award which has been challenged by the claimants in this appeal for enhancement.

6. Counsel for the appellants submits that ;

    - the multiplier has to be as per age of the deceased or the claimant, whichever is higher. In the instant case, the age of deceased was 50 years, whereas appellant No.1 was 52 years at the time of accident and as such, the appropriate multiplier for this age group is 11, therefore, the Claims Tribunal erred in applying the multiplier of 7.

- compensation awarded under the conventional heads is also on lower side and requires to be enhanced suitably.
- rate of interest awarded at the rate of 7% per annum from the date of application till payment is also very low and it requires upward revision and enhancement.

7. On the other hand, it has been argued by the Insurance company that the compensation awarded by the Claims Tribunal is just and proper and requires no further enhancement.

8. Heard counsel for the parties and perused the material available on record.

9. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/ Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a bonanza.

10. Now we shall examine as to whether compensation of Rs. 14,14,500/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

11. A perusal of the impugned award shows that the loss of dependency has been correctly assessed by Claims Tribunal and even this fact has not been disputed by the counsel for the appellant.

12. As regards the multiplier, looking to the age of the deceased and appellant No.1, which was about 50 years & 52 years respectively at the time of incident in question and keeping in mind the law with regard to determination of multiplier, in our considered opinion, the Claims Tribunal erred in applying the multiplier of 7. In fact, for the age group of 51 to 55 years, multiplier of 11 has to be applied not of 7 as per the

Schedule. Therefore, the multiplier is enhanced from 7 to 11. We, therefore, propose to re-compute the compensation by applying the multiplier of 11 to the loss of dependency as assessed by the Claims Tribunal.

13. By multiplying the annual dependency of Rs.2,00,000/-, as assessed by the Claims Tribunal, with the multiplier of 11, the compensation works out to Rs.22,00,000/-. Further, the Claims Tribunal has awarded 10,000/- towards loss of consortium; Rs.2,500/- towards loss of estate and Rs.2,000/- for funeral expenses, which appear to be of lower side. Having regard to the facts and circumstances of the case, we deem it fit to award Rs.1,00,000/- towards loss of consortium; Rs.50,000/- towards loss of estate and Rs.50,000/- for funeral expenses. In all, the total compensation comes to Rs.24,00,000/- (22,00,000 + 2,00,000).

14. Since the Tribunal has already awarded Rs.14,14,500/-, after the deducting the same the claimants/appellants are entitled for enhanced amount of Rs.9,85,500/-. This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization.

15. In the result, the appeal is allowed in part and the award impunged stands modified to the extent indicated above.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Ram Prasanna Sharma)
Judge

santosh