

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 115 of 2014

1. Sukwariabai, W/o, Late Mahesh Baiga, Aged About 26 Years
2. Amar Singh, S/o. Late Mahesh Baiga, Aged About 7 Years,
3. Ku. Shanti, D/o. Late Mahesh Baiga, Aged About 5 Years,
4. Peyush Kumar, S/o. Late Mahesh Baiga, Aged About 3 Years,
5. Ku. Malti, D/o. Mahesh Baiga, Aged About 1 Years,
6. Kalawami Bai, W/o. Lal Singh Baiga, Aged About 55 Years,
7. Lal Singh Baiga, S/o. Late Dhanpat Baiga,

Appellant No.2 to 5 are Minors, Through – natural guardian mother -
Smt. Sukwaria Bai, W/o. Mahesh Baiga, aged about 26 years,

All are R/o. Kurdur, Thana and Tah. Kota, Distt. -Bilaspur C.G.

---- Appellants

Versus

1. Ashok Ku. Shukla, S/o. C.B. Shukla, R/o. Opposite Of OPM Hanuman Mandir, Opposite Of C.P. Divedi House, Amlai, P.S. and Distt. Sahdol (M.P.)
2. Santosh Kumar Yadav, S/o. Shivnath Prasad Yadav, R/o. Ward No. 6, Jhhagraha Mohalla, Gram Panchayat- Bakho, P.S. and Distt. Shahdol (M.P.)
3. Shriram General Insurance Company Ltd., Through- Chief Manager, Divisional Office, E-8, E.P.I.P. Riko Sitapura, P.S. and Distt. - Jaipur Rajasthan, 302022

---- Respondents

For Appellants	: Mr. Utkal Pradhan, Advocate
For Respondent No.1 & 2	: Mr. Tarkeshwar Nande, Advocate
For Respondents No.3.	: None present.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

18/07/2017

Heard.

1. This appeal has been brought challenging the quantum of the compensation given in award dated 31.10.2013, by First Additional

Motor Accidents Claims Tribunal, Bilaspur in Claim Case No.13/2012.

2. Appellants are dependents of the deceased Mahesh Baiga. Deceased – Mahesh Baiga was traveling on cycle on 22.03.2012 between Amarkantak and Rajendragram on the main road, when he met with an accident with pick-up bearing registration No. M.P. -18GA-1023 and in the result, he died.
3. Respondent No.1 was driver, respondent No.2 was registered owner and respondent No.3 was the insurer of the offending vehicle involved in the accident.
4. Alleging that death of deceased has resulted due to rash and negligent driving of respondent No,1, claim case was filed against respondents, claiming Rs.11,50,000/- as compensation on various heads. Claim was contested by all the respondents.
5. After framing of issues and affording opportunity to adduce evidence to both the parties, award was passed, in which it was held that death of deceased -Mahesh Baiga resulted due to rash and negligent driving of the respondent No.1. The liability for paying compensation was saddled on the respondents jointly and severally and after assessment of the damages, a compensation of Rs.4,18,000/- was ordered to be paid by the learned tribunal below.
6. Grounds in this appeal are these that learned tribunal below has not followed the principle laid down in case of **Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation and Another**, reported in **(2009) 6 Supreme Court Cases 121** in the matter of deduction

from the income of the deceased and in the matter of choosing the correct multiplier. Further the compensation amount for consortium, funeral expenses and for love and affection has been awarded meagerly, hence prayed that amount of compensation be suitably enhanced.

7. It is submitted by the counsel for the appellants that deceased was of age below 25 years on the date of incident, hence in this case, the multiplier of 18 should have been selected. It is further submitted that dependents of the deceased in the case were 7 in numbers for which, the deduction for own expenses of the deceased should have been 1/5 as per the directions made in Sarla Verma case (Supra). It is also submitted that learned tribunal below has not given any consideration or made assessment with respect to the future prospect, which was directed in case of Sarla Verma (supra), and has also been reiterated in case of **Rajesh & Others Vs. Rajbir Singh & Others**, reported in **(2013) 9 Supreme Court Cases 54**, which has been followed in case of **Munna Lal Jain and another Vs. Vipin Kumar Sharma & Ors.**, reported in **(2015) 6 Supreme Court Cases 347**. In the later judgments, principle for making assessment for future prospects has been further defined on the basis of the age of the deceased, according to which, if the, age of the deceased was below 30 years and deceased was self employed or a person with fixed wages, in that case, the addition for future prospects will be 50% for the persons, for age above 40 years, such addition would be 30%. Hence, the claim of compensation be enhanced accordingly.

8. Counsel for the respondent No.1 and 2 have opposed the arguments submitted on behalf of the appellants and submits that as per the finding of the tribunal below, the liability for payment of compensation is on the insurance company, the respondent No.3.
9. Respondent No.3 has not appeared before this Court despite service of notice.
10. The question for determination arises in this appeal is whether the assessment made by the tribunal below had been correct with respect to the compensation awarded to the appellants?
11. Perused the documents, evidence and material on record.
12. In the application for claim, it was pleaded that age of the deceased was 30 years at the time of incident. On the basis of the evidence on record, the learned tribunal below has held that age of the deceased was 30 years at the time of incident. Considering this fact that postmortem report mentions the age of the deceased as 26 years, the multiplier of 17 has been selected for the age group between 26 to 30 years on the basis of the directions given in Sarla Verma's case (Supra). There is nothing in the evidence to defer with the conclusion drawn by the learned tribunal below. Hence, the selection of multiplier in this case had been a correct selection, which needs no interference.
13. The income of the deceased as assessed by the tribunal below is not under challenge. Clearly, appellants are 7 in numbers, as father of the deceased is not considered as the dependent according to the view expressed in Sarla Verma's case, looking to the number of

remaining dependent, the deduction in this case as per Sarla Verma's case direction, would be 1/4. Applying this principle, the yearly loss of income of the deceased, which was held as Rs.24,000/- by the learned tribunal below is raised to Rs.27,000/-. Multiplying this amount with applicable multiplier of 17 in this case, a total of Rs.4,59,000/- is the amount, which appellants are held to be entitled to receive as compensation for loss of income.

14. No consideration has been given by the tribunal below for awarding future prospects. As per the ratio of law laid down in case of Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation and Another, Rajesh & Others Vs. Rajbir Singh & Others and Munna Lal Jain and another Vs. Vipin Kumar Sharma & Ors. (Supra), 50% increase in the awarded amount has to be made, including which the compensation amount for loss of income and future prospects goes up to Rs.6,88,500/-.
15. The compensation for cremation was awarded only Rs.2,500/-, which is too much on the lower side. Hence compensation towards cremation is enhanced to Rs.25,000/-. Similarly, the compensation for loss of consortium given is Rs.5,000/-, which is a meager compensation. Including the compensation for loss of consortium and for love and affection, an amount of Rs.1,00,000/- is suitable compensation in these heads. The amount awarded towards loss of estate of Rs.2,500/- remains unchanged.
16. Thus the appeal is allowed. Appellants/claimants shall be paid a total compensation of Rs.8,16,000/- by the respondents jointly and severally within a period of 30 days from the date of this judgment.

On failure of respondents in payment of compensation awarded, interest @ 9% shall be chargeable from the date of this judgment till its realization. Compensation awarded by the tribunal below if paid, shall be adjustable in payment of compensation awarded by this Court.

17. In the result, the appeal is allowed. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram