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HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No. 1621 of 2016**

1. Mohan Sao S/o Shri Kheduram, aged about 45 years, R/o Village Kudumkela, Tahsil Gharghoda, Distt. Raigarh, Civil and Revenue Distt. Raigarh, Chhattisgarh (In Possession of Vehicle)
2. Minor Mahendra Sao S/o Mohan Sao, aged about 16 years through natural guardian his father Mohan Sao S/o Kheduram, R/o Village- Kudumkela, Tahsil- Gharghoda, Distt. Raigarh, Chhattisgarh (Driver of Vehicle)

---- Appellants**Versus**

1. Dayanidhi Sao S/o Late Shankar Sao, aged about 36 years, R/o Village Kudumkela, Tahsil Gharghoda, Distt. Raigarh, Chhattisgarh
2. Smt. Raibari D/o Late Shankar Sao, aged about 40 years W/o Shri Shiv Kumar, R/o Village- Mohanpur, Tah. Lailunga, Distt. Raigarh, Chhattisgarh
3. Smt. Komina D/o Late Shankar, aged about 34 years W/o Shri Dubraj, R/o Village Bansajhar, Tah. Dharamjaigarh, Distt. Raigarh, Chhattisgarh (Claimants)
4. Gokul Painkra S/o Shri Dhowanath Painkra, aged about 45 years R/o Village- Gharghoda, Tah. & P.S. Gharghoda, Distt. Raigarh, Chhattisgarh (Registered Owner of Vehicle)

---- Respondents

For Appellants	:	Shri M. K. Sinha, Advocate
For Respondents 1 to 3	:	Shri Deepak Ku. Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****18/01/2017**

The present appeal has been preferred assailing the order dated 23.08.2016 passed by the 5th Motor Accident Claims Tribunal, Raigarh (For short 'the Tribunal') in Claim Case No. 09/2015. Vide the said impugned order the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act allowed the claim application filed by respondents 1 to 3 i.e. the claimants and ordered for payment of compensation of Rs.4,04,000/- to the

claimants with interest @ 7% per annum from the date of application i.e. 22.01.2015.

2. This appeal has been preferred by the owner and driver of the vehicle questioning the quantum of compensation awarded by the Tribunal.

3. According to the counsel for the appellants the deceased Shankar Sao was aged around 60 years at the time of accident. As per the law laid down by the Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** the multiplier in the instant case ought to have been 8 whereas the Tribunal has taken the multiplier of 9 for the purpose of calculating compensation. This according to the counsel for the appellants is bad in law. The second contention put forth by the counsel for the appellants was that the income of the deceased has not been properly assessed by the Tribunal and therefore the notional income taken by the Court below is inappropriate and on the higher side. Thus, the impugned award needs interference of this Court.

4. Counsel appearing for the respondents 1 to 3 claimants submits that the present appeal is nothing but only a tactic to frustrate the claimants claim on the award of Rs.4,04,000/- vide the impugned order dated 23.08.2016 and the appellants are trying to gain time by filing the present appeal so that the award may not be honoured with. He further submits that a bare perusal of the findings of the Court below itself would show that the Court below has taken into consideration the necessary evidences which have come before it for the purpose of applying the multiplier as well as for calculating the compensation. Thus, prayed for rejection of the appeal.

5. At this juncture, counsel for the claimants also makes a submission that even if the quantum is interfered to the extent of the multiplier of 8 it is acceptable to him. According to the claimants, taking into consideration the

judgment of Sarla Verma (supra) for the purpose of calculation, if the multiplier of 8 is applied, the claimants does not have any grievance but the only anxiety is that whatever compensation is calculated, the same should be paid to the claimants at the earliest so that the money can be utilized by them.

6. Having considered the rival contention put forth by the counsel appearing on either side and also taking into consideration the evidences which have come on record without disputing the factual matrix of the case so far as the notional income taken by the Tribunal as Rs.3,000/- is concerned, this Court does not find it to be exorbitant or on the higher side as the amount of Rs.3,000/- if divided by 30 days, it would come only Rs.100/- per day which is much less than the minimum wage of an unskilled worker in the country today. Therefore, the said assessment of Rs.3000/- as notional income of the deceased needs no interference.

7. So far as the multiplier applied by the Tribunal is concerned, the law in this regard is by now well settled right from the time of Sarla Verma's case and others and it has reached to the stage of the 2nd Schedule of the Motor Vehicles Act being enacted for the purpose of calculating the compensation. As per the Schedule fixed in Sarla Verma Case, the multiplier in case of a person whose age is 60 years would be 8. Thus, the multiplier applied in this case is not proper and the same deserves interference. Thus, the multiplier in the present case for the purpose of calculating the compensation shall be 8 in stead of 9. Accordingly, in the given factual matrix of the case, the award would stand modified to that extent. Rest of the award passed by the Tribunal shall remain intact. Thus, applying the multiplier the claimants are entitled for compensation of Rs.2,88,000/- in stead of Rs.3,24,000/- awarded by the Tribunal. In addition, they would also be entitled for funeral expense of Rs.20,000/- and

Rs.60,000/- towards love and affection as awarded by the Tribunal, totalling Rs.3,68,000/- in stead of Rs.4,04,000/-. The claimants shall be also entitled for interest on the awarded amount as awarded by the Tribunal.

8. With the aforesaid modification in the impugned award, the appeal stands partly allowed.

Sd/-

(P. Sam Koshy)
JUDGE