**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 205 of 2014**

(Arising out of judgment dated 25-09-2013 in Motor Accident Claim Case No. 151/2013 of the learned 5th Additional Motor Accident Claims Tribunal, Durg (CG)

1. Smt. Ram Bai W/o Late Kaushal Prasad Jangde Aged About 37 Years
2. Ku. Pooja D/o Late Kaushal Prasad Jangde Aged About 16 Years
3. Virendra Kumar S/o Late Kaushal Prasad Jangde Aged About 15 Years
4. Ku. Urwashi D/o Late Kaushal Prasad Jangde Aged About 4 Years

   Appellants No. 2 to 4 minor through legal guardian mother Smt. Ram Bail W/o. Late Kaushal Prasad Jandge

   All are resident of Ward No. 22, Sharda Para, Camp-2, P.S. Chhawani, Tah. And Distt. Durg C.G. Civil and Revenue Distt. Durg (CG)

**---- Appellants**

**Versus**

1. Komal Yadu S/o Dhaniram Yadu Aged About 29 Years R/o Chanderi, P.O. Damakheda, P.S. Simga, Distt. Raipur C.G.

   (Driver of alleged vehicle Truck bearing registration No. CG 04 G 2565)
2. Pravesh Kumar Chaturvedi S/o Gokul Chand Chaturvedi Aged About 50 Years R/o M/s Prakash Industries, Ring Road No. 2, Gongaon, Raipur, Tah. And Distt. Raipur C.G.

   (Owner of alleged vehicle Truck bearing registration No. CG 04 G 2565)
3. Chola Mandalam M.S. General Insurance Company Limited Om Kiran Building First Floor A-10, First Floor Sector-19 Noida, 201301 (U.P.), Thru- Claims Manager, Shri Ram Height Building, Gandhi Chowk, Shanker Nagar Road, Near Bhagat Singh Chowk, In Front Of Gandhi Garden, G.E. Road, Raipur C.G.

**---- Respondents**

---

| | |
|---|---|
| For appellants | Mr. G.P. Kurre, Adv. |
| For Respondent No.1 | None though served. |
| For Respondent No. 2 | Mr. O.P. Agrawal, Adv. |
| For Respondent No. 3 | Mr. Ghanshyam Patel, Adv. |

---

**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**CAV JUDGMENT**

**25-9-2017**

1. By this Judgment, the appeal filed on behalf of the appellants/ claimants under Section 173 of the Motor Vehicles Act, 1988 (in brevity 'Act of 1988') arising out of the award passed by the 5th Additional Motor Accidents Claims Tribunal, Durg (in brevity 'the Tribunal') dated 25-9-2013 in MACC No. 151/2013 is being disposed of as the claimants/appellants prayed for enhancement of the award.

2. As per facts of the case, all the appellants are legal representatives of the deceased Kaushal Prasad Jangde who died on account of a motor accident on 18-9-2011 whereby truck bearing registration No. CG-CG-2565 driven by respondent No. 1-driver, owned by respondent No. 2 and duly insured by respondent No. 3 hit the deceased when he was near the road for urination. The deceased died on the spot. Matter was reported to Police Station, Simga, Distt. Raipur. Simga police registered Crime No. 230/2011 for offence under Section 279, 338, 304(A) of the Indian Penal Code, 1860 and after due investigation police filed charge sheet against the respondent no. 1 before the appropriate criminal court. Legal representatives of the deceased/ appellants filed motor accident claim case before the Tribunal for compensation of Rs. 19,10,685/-. After appreciating the evidence adduced by the parties and after hearing the parties finally, the Tribunal fastened liability to satisfy the award to all the respondents and directed that respondents shall pay an amount of Rs. 6,34,000/- as compensation to the

appellants. First liability to satisfy the award has been fastened on respondent No. 3. Learned Tribunal further directed that the claimants shall also get interest at the rate of 6% per annum from the date of presentation of the claim petition and also directed apportionment of the awarded amount between the appellants. Being aggrieved by the said award, the appellants have filed instant MAC and prayed that compensation given by learned Tribunal is not as per settled law and facts. Hence it is prayed that instant MAC may be allowed. The amount awarded may be enhanced on the basis of facts surfaced and mentioned in the instant MAC.

3. Heard learned counsel for the parties.

4. Learned counsel for the appellants submits that age of the deceased was held as 42 years at the time of death whereas the appellants adduced evidence by filing Ex. P-25-C which is the mark sheet which shows the date of birth of the deceased as 21-9-1973. Therefore, the multiplier of 14 applied by the Tribunal is not proper. Looking to the actual age of the deceased, multiplier of 15 would apply. It is further argued that the appellants had filed pay slip as Ex. P-24. As per said pay slip, the deceased who was working under a private contractor in the Bhilai Steel Plant got salary as daily wager Rs. 4,733.67 as net salary. As salary of the daily wager is deducted on their taking leave the Tribunal assessed Rs. 4,000/- as monthly income of the deceased but the said assessment is not correct. The Tribunal ought to have calculated monthly income on the basis of actual salary received by the deceased as per Ex. P-24. Also the

Tribunal failed to appreciate future prospect, also not awarded any amount towards love and affection. It is prayed that the appeal may be allowed and the amount of award may be enhanced.

5. In support of his submission, learned counsel for the appellants placed reliance on the judgment of Hon'ble Supreme Court in the matter of Smt. Sarla Verma and others -v- Delhi Transport Corporation and another reported in 2009 (2) SCCD 937 (SC), Munna Lal Jain and another -v- Vipin Kumar Sharma and others reported in 2015(3) CGLJ 93 (SC), Asha Verman and others -v- Maharaj Singh and others reported in 2015 (3) CGLJ, 557 9SC), Smt. Malti Dev Tripathi and others -v- Mukesh Tiwari and another reported in 2015(4) CGLJ 232, Kusum Lata and others -v- Satbeer and others reported in AIR 2011 SC 1234 and submits that on the basis of the law laid down in the above cited case lawS, the appeal may be allowed. Compensation may be suitable enhanced in entirety.

6. Per contra, learned counsel for the respondents oppose the arguments advanced on behalf of the appellants and submit that the Tribunal awarded the compensation on the basis of the facts surfaced during trial and also on the basis of the principle of just and proper compensation. Hence instant MAC may be dismissed.

7. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties during trial and also principles of law laid down by the Hon'ble Apex Court and other forum.

8. On perusal of the entire material adduced regarding date of birth of the deceased, the date of accident and other facts as surfaced in the post mortem report and other documents of the charge sheet filed against respondent No.1, it appears that by taking multiplier of 14, the Tribunal has committed an error. The Tribunal has held the age of the deceased as 42 years but applied multiplier of 14 which is apparently not correct. As per settled law, for the age of the deceased i.e. 42 years, the multiplier of 15 would be appropriate.

9. As regards income of the deceased, on perusal of the Ex. P-25C and statement of appellant No. 1 in para 14 coupled with the fact that the deceased was a daily wager in a private forum, he was not an employee of the Bhilai Steel Plant, it is clear that his salary is always based on the actual working days being a daily wager and not regular employee under any organization under the affairs of the State and otherwise. In Ex. P-25C the pay slip, it appears that in the month of June, 2011, the deceased got salary of Rs. 4,733.67 paisa. The Tribunal has rightly held that daily wagers are given their salary after deducting period of leave etc., but failed to consider that the salary in Ex. P-25C is the amount which the deceased actually received after deduction etc., if any, therefore, in the considered view of this court, the monthly income of the deceased assessed by the Tribunal as Rs. 4,000/- is not proper. It would be proper to hold the monthly income of the deceased after consideration of entire facts. Ex. P-25-C is the pay slip and Rs. 4,733.67 paisa is the actual amount the deceased received after deduction of the leave etc. Therefore, this court hold monthly income of the deceased as

Rs. 4,500/- instead of Rs. 4,000/- as there are possibility of leave on account of necessity and other facts. By multiplying 12 to Rs. 4,500/-, yearly income would come to Rs. 54,000/-. Now calculate the loss of income after deducting 1/4th of the amount for the personal expenses of the deceased as held in Sarla Verma's case (supra), the amount would come to 40,500/- yearly. By applying multiplier of 15, the amount towards loss of income would come to Rs. 6,07,500/-. The Tribunal awarded compensation in the said head Rs. 5,04,000/-. Therefore the appellants are entitled to get additional enhanced compensation of Rs. 1,03,000/- only over and above the amount awarded by the Tribunal.

10. Learned counsel for the appellant has argued regarding compensation towards love and affection, but on perusal of the award, it appears that the Tribunal has award Rs. 1,30,000/- for the loss of estate, for cremation and for loss of consortium. Therefore, the Tribunal has awarded Rs. 1,30,000/- towards other head which does not appear to be unjust in the facts and circumstances of the case. In the light of the settled principles, I am not inclined to grant any more compensation for aforementioned head. Therefore, the total amount of compensation works out to Rs. 6,07,000/- + Rs. 1,30,000/- = Rs. 7,37,000/-.

11. It has been argued that the rate of interest 6% per annum is not proper, instead interest at the rate of 9% per annum may be awarded. On due consideration as per settled law and legal pronouncements, rate of 6% is just and proper hence rate of

interest awarded also does not call for any modification.

12. As a result, instant MAC is hereby allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs. 6,34,000/- to Rs. 7,37,000/- i.e. enhanced by Rs. 1,03,000/-. On the amount of compensation so awarded, the appellants shall also be entitled to interest at the rate of Rs. 6% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. The Insurance Company is directed to deposit the enhanced amount of compensation along with proportionate interest thereupon before the learned Tribunal within a period of two months from today. Obviously, the insurance Company shall be entitled to adjust the amount, if any which it has already paid or deposited.

13. CC as per rules.

**Sd/-**
**(Chandra Bhushan Bajpai)**
**Judge**

Pathak