NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1245 of 2014

Order reserved on : 05.05.2017

Order passed on : 12.05.2017

1. Smt. Mamta, W/o Shri Ramesh, Aged About 28 Years,
2. Ramesh, S/o Ganesh Rajak, Aged About 30 Years,

   Both are by Caste Rajak, Resident of Village Parewadih, Thana and Tahsil Dhamtari, Civil and Revenue District Dhamtari (C.G.)

---- Appellants

Versus

1. Kishore Kumar S/o Shankerlal Namdeo, Aged About 52 Years, R/o Khodiya Talabpara, Ganesh Chowk, Dhamtari, Thana and Tahsil Dhamtari, Civil and Revenue District Dhamtari (C.G.) (Driver of vehicle No. CG 04/G/3230).
2. Prabhjeet Singh, S/o Shri Amarjeet Singh, Aged About 32 Years, by caste Khalasa, R/o Sihawa Chowk, Dhamtari, Thana and Tahsil Dhamtari, Civl and Revenue Distt. Dhamtari (C.G.) (Owner of vehicle No. CG 04/G/3230).
3. The Oriental Insurance Company Limited Through- Branch Manager, Divisional Office, Behind Amar Talkies, Balak Chowk, Dhamtari, Civil and Revenue District Dhamtari (C.G.) (Insurer of vehicle No. CG 04/G/3230)

---- Respondents

For Appellants	:	Mr. Sunil Sahu, Advocate
For Respondents No.1 and 2	:	None for the respondents No.1 and 2, though served.
For Respondent No.3	:	Mr. Arvind Shrivastava, Advocate

Hon'ble Shri Justice Anil Kumar Shukla

C. A. V. ORDER

1. The instant miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') has been preferred by the claimants/appellants for enhancement of the compensation awarded by the Additional Motor Accidents Claims Tribunal, Dhamtari vide impugned award dated 01.09.2014 passed in Claim Case No. 97/2014, whereby compensation in the sum of Rs. 2,75,000/- has been awarded in favour of the claimants/ Appellants. The Appellants had filed the claim petition seeking compensation to the tune of Rs. 6,00,000/- on account of death of their son Vikas Rajak, aged about 9 years.

2. The facts, in brief, are that on 29.04.2013 in the night, at 8.15, son of the Appellants' Vikas Rajak was coming from Dhamtari to his Village Parewadih along with his cousin brother Mahendra Rajak in the motor cycle. The motor cycle was being driven by Mahendra Rajak and Vikas Rajak was sitting behind the motor cycle as pillion rider. At that time, Respondent No.1 was driving truck bearing registration No. CG 04/G/3230 in a rash and negligent manner and dashed the motor cycle, which resulted into an accident. As a result of the accident, Mahendra Rajak and Vikas Rajak received grievous injuries on their body. They were got admitted in Christian Hospital at Dhamtari by the witnesses. During treatment, Vikas Rajak died in the hospital. First Information Report was lodged in Police Station City Kotwali

Dhamtari, wherein Crime No. 152/ 13 was registered against respondent No.1 for offence punishable under Sections 279, 337, 338, 304A IPC and after investigation a charge sheet was filed against him in the Court of Chief Judicial Magistrate, Dhamtari.

3. At the time of accident, deceased Vikas Rajak was about 10 years old and he was a student of 4th Standard. In the funeral of deceased Vikas Rajak, the Appellants incurred expenditure of about Rs. 40,000/- to 50,000/-. The Appellants filed a claim petition under Section 166 of the Act before the Tribunal seeking compensation to the tune of Rs. 6,00,000/- on account of death of their son Vikas Rajak.

4. Respondents No.1 and 2, the driver and the owner of the offending vehicle filed their written statement before the Tribunal, wherein it is stated that on the date of accident, Respondent No.2 was the owner of the offending vehicle and the accident took place on account of rash and negligent driving of the vehicle by Respondent No.1. Respondent No.2 did not violate any of the terms and conditions of the policy of Insurance. Therefore, it is prayed that the claim petition, so far as it relates to Respondent No.2/owner, may be dismissed and liability of payment of compensation, if any arises may be fastened on respondent No.3/insurer of the offending vehicle.

5. Respondent No.3/insurer also filed its written statement before the Tribunal. It denied the averments made in the claim petition. It was submitted by the insurer before the Tribunal that the

accident took place on account of negligence of the deceased himself and the deceased was liable for contributory negligence. It was further submitted that at the time of the accident, the driver of the offending vehicle was not having a valid and effective licence to drive the offending vehicle and, therefore, the vehicle was being driven in contravention of the terms and conditions of the policy of insurance. Therefore, the insurer claimed that it is not liable to satisfy the impugned award.

6. The Tribunal, after hearing the parties and appreciating the evidence available on record, passed the impugned award granting compensation for a sum of Rs. 2,75,000/- in favour of the Appellants with 6% interest per annum from the date of filing of the claim petition till realisation of the full amount of compensation.

7. Learned Counsel appearing for the Appellants/claimants would submit that the Tribunal erred grievously in awarding the meager sum of compensation of Rs. 2,75,000/- in a case of death of about 9 years old child. He would further submit that the Tribunal also erred in assessing the annual income of the deceased to be Rs. 15,000/- per annum, whereas, as per the latest judgment of the Hon'ble Apex Court, the income of any person cannot be assessed less than Rs. 4,500/- per month. He would also submit that the Tribunal has awarded only 6% interest, whereas it should have been awarded at least 18% interest. He would submit that the Hon'ble Supreme Court, in

Kishan Gopal and another v. Lala and others 2013 ACJ 2594, under the head of mental agony has awarded a sum of Rs. 50,000/-. Therefore, he prayed that the amount of compensation may be enhanced suitably.

8. Learned counsel appearing on behalf of Respondent No.3/Insurance Company would support the impugned award and submit that the award is well reasoned and does not warrant any interference by this Court and, therefore, the instant appeal of the claimants may be dismissed.

9. I have heard learned counsel appearing for the parties at length and perused the record of the Tribunal with utmost circumspection.

10. From perusal of the record, it is clear that the age of the deceased was about 9 years 5 months and 17 days. At the time of accident, the deceased was minor and unmarried. Appellant No.1 Smt. Mamta and Appellant No.2 Ramesh are his mother and father, respectively. They made claim before the Tribunal for compensation. The income of the deceased was assessed by the Tribunal to be Rs.15,000/- per annum.

11. In **Kishan Gopal case** (supra), the Hon'ble Apex Court assessed the income of the deceased, who was 10 years old at the time of accident, to be Rs. 30,000/- per annum and adopting multiplier of 15 awarded total compensation of Rs.5,00,000/- including the amounts under conventional heads. The Hon'ble Apex Court observed as under:-

> "**18**. Point Nos. 2 and 3 are answered together in favour of the appellant for the following reasons:-

The Tribunal having answered the contentious issue No.1, against the appellants in its judgment the same is concurred with by the High Court by assigning erroneous reasons and it has affirmed dismissal of the claim petition of the appellants holding that the accident did not take place on account of the rash and negligent driving of the offending vehicle by the first respondent and therefore the contentious issue Nos.1 and 2 are answered in the negative against the appellants and it has not awarded compensation in favour of the appellants.

Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos.1 & 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10 year old son. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states as under:

"6. *Notional income for compensation to those who had no income prior to accident:*

xxx xxx xxx

(a) Non-earning persons – Rs.15,000/- p.a." The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in the case of Lata Wadhwa & Ors. v. State of Bihar & Ors. 2001ACJ 1735(SC), while examining the tortuous liability of the tortfeasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs.1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs. Further, in the case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs.24,000/- p.a. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non- earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation,2009 ACJ 1298 (SC), the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in General Manager State Road Trans. Corpn, v. Susamma Thomas,1994 ACJ 1 (SC) which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable

> compensation to be awarded in favour of the appellants. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy,2012 ACJ 48 (SC), for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified."

12. In the case in hand, the deceased boy was aged about 9 years 5 months and 17 days. Considering the future prospects of the deceased, his notional income is assessed to be Rs.30,000/- per annum. As per the ratio of law laid down in **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another (2009) 6 SCC 121** and since the deceased was an unmarried boy, 50% of his income needs to be deducted towards his personal and living expenses. Therefore, income of the deceased for computation of compensation towards the head of loss of income is assessed to be Rs.15,000/- per annum. The Hon'ble Apex Court in **Sarla Verma case** (supra) considered various earlier decisions and observed in para 26 as under:

> "**26**. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardize the deductions to be made under the

> head of personal and living expenses of the deceased. This lead to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction, got statutory recognition under Second Schedule to the Act, in respect of claims under Section 163 A of the Motor Vehicles Act, 1988 ("the MV Act", for short). But, such percentage of deduction is not an inflexible rule and offers merely a guideline.

13. In the instant case, according to **Kishan Gopal case** (supra), on applying the multiplier of 15, the compensation towards loss of income comes to (Rs.15,000/- x 15 =) Rs.2,25,000/-.

14. The Tribunal has granted Rs.10,000/- under the head of love and affection which appears to be too meager. Taking into consideration the law laid down in **Kishan Gopal case** (supra), the amount awarded under the head of love and affection is enhanced to Rs.50,000/-. The amount of Rs. 5,000/- awarded under the head of funeral expenses is enhanced to Rs.10,000/-. Thus, the total compensation comes to (Rs.2,25,000/- + Rs.50,000/- + Rs.10,000/- =) Rs.2,85,000/-. The claimants shall also be entitled to get simple interest @ 9% per annum on the total amount of compensation of Rs.2,85,000/- from the date of filing of the claim petition before the Tribunal till realisation of the full amount of compensation.

15. In the result, the appeal is allowed in the aforesaid terms.

16. The Registry is directed to communicate the claimants in writing the total amount of compensation and the rate of interest awarded today in this appeal as against the impugned award passed by the Tribunal. The said communication be made to the claimants in Hindi Deonagari language. No order as to costs.

Sd/-
(Anil Kumar Shukla)
JUDGE

santosh