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HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No. 719 of 2016**

- Krishna Kumar Agrawal S/o Vishwanath Agrawal, Aged About 39 Years R/o Paras Complex No. 39, Green Chowk, Malviya Nagar, Durg, Tahsil And District Durg, Chhattisgarh(Owner Of The Offending Vehicle C.G./07/ C /6885)

---- Appellant**Versus**

1. Vinod Kumar Jain S/o Mohan Lal Sethi, Aged About 47 Years R/o F/10, Purana Adarsh Nagar, Durg, Tahsil And District Durg, Chhattisgarh
2. Smt. Sushama Sethi W/o Vinod Kumar, Aged About 40 Years R/o F/10, Purana Adarsh Nagar, Durg, Tahsil And District Durg, Chhattisgarh
3. Naman Kumar Jain (Sethi) Aged About 17 Years Minor Through Natural Guardian Father Appellant No. 1 (Now Respondent No.1) Vinod Kumar Jain, R/o F/10, Purana Adarsh Nagar, Durg, Tahsil And District Durg, Chhattisgarh(Claimants)
4. S. Ram (Asharam) @ Eshu S/o Shankar Lal, Aged About 22 Years R/o Village Nankatthi, Police Station Ahivara, Tahsil Dhamdha, District Durg, Chhattisgarh(Driver Of The Offending Vehicle C.G./07/c /6885)

---- Respondents**And****Misc. Appeal (C) No. 794 Of 2016**

1. Vinod Kumar Jain S/o Mohanlal Sethi, Aged About 47 Years R/o F-10, Old Adarsh Nagar, Durg Tahsil & District Durg (Chhattisgarh)
2. Smt. Sushama Sethi, W/o Vinod Kumar, Aged About 40 Years R/o F-10, Old Adarsh Nagar, Durg Tahsil & District Durg (Chhattisgarh)
3. Naman Kumar Jain (Sethi) Aged About 17 Years Minor, Through Natural Guardian Father e.i.. Appellant No. 1, Vinod Kumar Jain, S/o Mohanlal Sethi, Aged About 47 Years, R/o F-10, Old Adarsh Nagar, Durg Tahsil & District Durg (Chhattisgarh).....(Claimants)

---- Appellant**Vs**

1. S. Ram (Ashram) @ Ishu S/o Shankar Lal, Aged About 22 Years R/o Village Nankatthi, P. S. Ahivara, Tahsil Dhamdha, District Durg (Chhattisgarh).....(Driver Of Vehicle No. C G 07 C 6885)
2. Krishna Kumar Agrawal, S/o Vishva Nath Agrawal, R/o Paras Complex, Number 39, Green Chowk, Malviya Nagar, Durg Tahsil & District Durg (Chhattisgarh).....(Owner Of Vehicle No. C G 07 C 6885)

---- Respondents

For Appellants: Mr. Ankit Singhal, Counsel in MAC No. 719/2016
Mr. Amiyakant Tiwari, Counsel in MAC No.794/2016

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01.03.2017**

1. These are two appeals filed by the owner of the vehicle as well as the claimants assailing the same judgment / award dated 14.03.2016 passed in Motor Accident Claim Case No. 101/2014.
2. The brief facts relevant for the adjudication of the present appeals is that an accident took place on 06.10.2014 in which one Kumari Mayuri Jain died on the spot. The vehicle involved in the accident i.e. Tata Truck Bearing Registration No. CG/07/C/6885 was owned by the Appellant in Misc. Appeal (C) No. 719/2016 and who is also Respondent No. 2 in Misc. Appeal (C) No. 794/2016. The Respondent No. 4 in Misc. Appeal (C) No. 719/2016 and Respondent No. 1 in Misc. Appeal (C) No. 794/2016 was the driver of the said vehicle. Respondents No. 1 to 3 in Misc. Appeal (C) No. 719/2016 and Appellants in Misc. Appeal (C) No. 794/2016 are the claimants who are father, mother and brother of the deceased Kumari Mayuri Jain (For convenience sake and to avoid confusion parties to the dispute shall be referred to as owner, driver and claimants hereinafter). The deceased at the time of accident was aged around 19 years. The claimants had filed Claim Case before the Tribunal claiming Rs. 24,50,000/- on account of the death of the eldest child in the family aged around 19 years. After the evidence both oral and documentary were brought on record the Tribunal finally vide its impugned award dated 14.03.2016 allowed the Claim Case and ordered the claimants are entitled for an amount of Rs. 10,54,000/-.
3. It is pertinent to mention at this juncture since the vehicle involved in the accident was not insured, the responsibility / liability of payment of compensation fell upon the owner of the vehicle. It is this award which has been challenged by the owner as well as the claimants by

these two appeals. The claimants have sought for enhancement of the award and the owner has sought for quashment of the award, if not at least for reducing the quantum of award.

4. So far as the contention of the owner is concerned the ground of challenge is two fold firstly the vehicle involved in the said case was in the name of the company known as M/s Kishore Sortex And Rice Mill Pvt. Ltd. which is the legal entity in itself and when the vehicle belonging to the company, the company ought to have been made a party and not the Appellant Krishna Kumar Agrawal who only happens to be one of the directors of the company. According to the owner since the vehicle belongs to the company for all practical purposes the owner of the vehicle would have been the company itself, not Krishna Kumar Agrawal. Therefore, for nonjoinder of the owner of the company, the entire claim application itself is not sustainable and deserves to be set aside / quashed.
5. So far as the second limb of argument of the owner it is in respect of the quantum of compensation awarded. According to the owner the Court below wrongly calculated the average income of the deceased to be around Rs. 4500/- per month whereas at best the notional income of Rs. 3000/- ought to have been taken and the amount of compensation would definitely have got reduced. Likewise it was also contended that the Tribunal has again committed an error of law in taking into consideration the future rise in the income of the deceased which the Tribunal should not have done in view of the fact that the deceased was only a student at the time of the accident and therefore the award deserves to be interfered on this ground also.
6. In addition it was also submitted that the loss of love, affection and

dependency granted by the Tribunal of Rs. 1,00,000/- is also on higher side whereas in the recent times the Supreme Court has not been giving so much of compensation against love, affection and dependency. Thus, prayed for setting aside of the award or at least modifying of the award to that extent by reducing the compensation amount by assessing the monthly income from Rs. 4500/- to at least Rs. 3000/- per month and also by reducing the compensation awarded under loss of dependency, love and affection. Further the future rise in income also should be deducted from the award granted.

7. So far as the appeal of the claimants are concerned they contended that the award given by the Tribunal is on lower side on account of the fact that it has failed to appreciate the evidence which have been brought on record by the claimants so far as her income is concerned. According to the claimants the deceased in addition to pursuing her studies of undertaking the degree course in B.Com, was also attached to the office of a Chartered Accountant. The firm of the Chartered Accountant was itself paying the deceased an amount of Rs. 5,000/- per month and a certificate from the said firm was also brought on record vide Annexure P/13 which has not been properly considered in its true perspective by the Tribunal and therefore the amount of compensation deserves to be enhanced taking into consideration the income of the Petitioner to be Rs. 7000/- per month. It was also contended that the future growth of income should have been 100% considering the age of the victim.
8. So far as in reply to the contention of the owner that the company having not been made a party, the contention of the claimants is that no such plea has been taken by the owner before the Tribunal nor did he insist framing of such issue. Therefore, the owner cannot

press the said ground to assail the amount awarded. It was also contended by the claimants that in the absence of the same even in the memo of appeal preferred i.e. the ground raised in Misc. Appeal (C) No. 719/2016 also no such ground has been raised by the owner questioning the impugned award. It is only an oral argument which has been advanced by the Counsel for the Appellant owner which cannot be accepted. The claimants thus also prayed for rejection of the appeal preferred by the owner.

9. Having heard the contention put forth on either side and on perusal of the record, if we look into the contention of the owner trying to shift burden of liability of compensation, what is necessary to be taken note of is that such a plea was never raised, pleaded or even evidence in this regard adduced by the owner at any point of time. However, indisputably the company also is managed, operated and taken care by the Appellant owner himself. What is also pertinent is the fact that even in the memo of appeal filed before this Court also the said ground has not been raised by the owner. If we look into the evidence which have come on record from the owner certain things that are apparently clear forces this Court to draw a strong inference against the Appellant owner. Three witnesses have been examined on behalf of the owner. NAW1 S. Ram, driver of the vehicle, NAW2 Yogesh Kumar Upadhyay, Supervisor of the Company and third the owner himself. All these three witnesses have admitted the fact the accident to have taken place. All these three persons have also accepted the deceased getting injured as a result of the accident. Thus the incident stands fully proved beyond all reasonable doubts.
10. In the evidence of the Appellant owner he has accepted the fact that he is the director of a private limited company namely M/s Kishore Sortex And Rice Mill Pvt. Ltd. and that the vehicle stood in the name

of the company. Thus so far as the vehicle belonging to the private limited company owned by the owner also stands fully established. In addition there is no evidence whatsoever in the deposition of the owner in respect of there being any other director also in the company. Neither is there any evidence to show that the Krishna Kumar Agrawal was not the actual owner of the company but there are other persons also coupled with the fact that neither any such objection was raised before the Tribunal nor any ground raised in the present appeal except for an oral submission which has been made by the Counsel appearing for the owner. Thus this Court does not find any strong, cogent and valid reason to accept the contention of the owner to disbelieve that the Appellant Krishna Kumar Agrawal is not the owner of the said vehicle.

11. So far as ground of quantum is concerned when we refer to the decision of the Supreme Court in this regard considering the status of the dependents, undoubtedly the deceased was undertaking her graduation course in commerce. The age of the deceased also is not disputed of her being only 19 years of age. The evidence which has come on record though which has not been accepted by the Tribunal is that while she was undertaking the degree course she was also associated with a firm of the Chartered Accountant where she was drawing salary of Rs. 5000/-. The date of incident was 06.01.2014 and in the year 2014 if we look into the minimum wages that were in force the minimum wages for an unskilled labour was somewhere around Rs. 6000/- a month i.e. about Rs. 200/- a day. Therefore for all practical purposes the calculation of compensation must be made keeping this in mind. Though the claimants have claimed that the deceased was associated with the firm of Chartered Accountant the same has not been accepted by the Tribunal. Neither has the

Tribunal taken into consideration the certificate of the salary issued by the said Chartered Accountant. So far as the notional income of the deceased is concerned the Court has taken it to be Rs. 4500/- a month which is just around Rs. 150/- a day. If we take into account the minimum wages that were prevalent it would reveal that it was even less than what was the minimum wages of an unskilled labour. Relying upon the decision of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and Another [2009 (6) SCC 121]**, **Vimal Kanwar and Others v. Kishore Dan and Others [2013 (7) SCC 476]** and **Reshma Kumari and Others v. Madan Mohan And Another [2013 (9) SCC 65]** this Court does not find any infirmity or perversity in finding of the Tribunal calling for interference with the impugned order so far as the income of Rs. 4500/- per month being taken into consideration.

12. In so far as the appeal of the claimants for enhancement is concerned if the facts and circumstances narrated in the preceding paragraph are considered the reasoning given by the Tribunal in disbelieving the certificate issued by the firm of Chartered Accountant seems to be plausible and reasonable finding of fact. Another aspect which cannot lose sight of is that though the Tribunal has not accepted the certificate of salary of the firm of the Chartered Accountant but at the same time the Tribunal has taken the notional income of the deceased to be around Rs. 4500/-. As such there is not much difference between the salary taken as notional salary by the Tribunal as compared to the certificate issued by the firm of the Chartered Accountant. For this reason also this Court does not find any good ground made out by the claimants who are seeking enhancement of the award.

13. So far as the contention of the owner in respect of the future rise on

the income, the said issue also stands adjudicated upon in the Judgment of Sarla Verma (Supra) wherein in paragraph 24 of the said judgment the Court has held that as a matter of rule of thumb the future rise on income has to be accepted. This view in case of Sarla Verma (Supra) further is reiterated in the case of Vimal Kanwar (Supra) wherein relying upon the judgment of **New India Assurance Co. Ltd. v. Gopali [2012 (12) SCC 198]** in paragraph 31 of the Judgment of Vimal Kanwar (Supra) has approved the grant of future rise of income as part of the compensation. In view of the said authoritative decisions the said ground of the owner also stands negated.

14. So far as the compensation under conventional and non-conventional heads like loss of love, affection and dependency, and funeral expenses are concerned, this Court does not find the amount of compensation to be either exorbitant or on the higher side for interfering with the same. Hence, challenge on the said head also stands negated.

15. In view of the foregoing, the two appeals filed by the owner as well as by the claimants being devoid of substance deserve to be and are accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE