

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 108 of 2013**

1. Smt. Prabha Jain, aged about 48 years, W/o Shri Santosh Kumar Jain.
2. Santosh Kumar Jain, aged about 49 years, S/o Late Shri Ram Kumar Jain.
3. Ku. Richa Jain, aged about 16 years, D/o Shri Santosh Kumar Jain, minor, through the natural guardian, mother Smt. Prabha Jain, the Appellant No.1.

All are R/o Vasudha Krishna Bhavan, Ganganagar, Sector-2, near Kanhaiya Traders, Mangla-road, P.S./P.O./Tahsil/District Bilaspur (C.G.)

---- Appellants

Versus

1. Shadulla, aged about 35 years, S/o Abdul Karim, R/o at P.O. Kakakhadak Jhoparpatti, Wakad, P.S. Hijwadi, Pune, Tahsil/District Pune (Maharashtra)
2. Sunil G. Salve, R/o 1574-A/P, Kalebadi Path, Pimpri Colony, Pune (Maharashtra) 411017
3. Manager, ICICI Lombard, General Insurance Company Limited, Jenith House, Keshavrao Khande-road, Mahalaxmi, Mumbai (Maharashtra) 400034.

---- Respondents

For Appellant	:	Shri Ritesh Verma, Advocate.
For Respondent Nos.1 and 2	:	None.
For Respondent No.3	:	Shri Sourabh Sharma, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

26.09.2018

1. By the instant appeal, the appellants/claimants are challenging the legality and validity of the impugned award dated 20.09.2012

passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur (in short "Claims Tribunal") in Claim Case No.158/2010, whereby the learned Claims Tribunal awarded total compensation of Rs.13,84,500/- and fastened the liability on Respondent No.3 – Insurance Company for satisfying of the award of compensation.

2. Brief facts of the case, are that on 20.03.2009 deceased – Rohit Kumar Jain who was working as Associate Consultant Vend 'C' in Infosys Technology Limited, Pune (Maharashtra) met with an accident when the deceased was going to Balaji Center for Telecom Management College, Pune from the office of Infosys, riding on a motorcycle Pulsar bearing registration No. HR-03-J-1991 alongwith a pillion rider Ku. Priyanka Jain. As the deceased reached near Vinode-wasti Wakad, Pune, when the driver of the offending vehicle TATA 709 bearing registration No. MH-04-BU-9340 drove the said vehicle rashly and negligently dashed the vehicle No. HR-03-J-1991 on which the deceased was traveling. The deceased died on the spot due to fatal injury and the pillion rider was seriously injured. The claimants, who are parents and sister of deceased – Rohit Kumar Jain, have filed claim application before the Tribunal claiming compensation to the tune of Rs.85,27,512/- from the respondents under various heads.
3. Respondent No.3 – Insurance Company has admitted that the vehicle bearing registration No. MH-04-BU-9340 was insured with the company on the date of accident. It has been pleaded by

the Respondent No.3 that the accident took place when the deceased alongwith pillion rider Ku. Priyanka Jain were traveling in vehicle bearing registration No. HR-03-J-1991 which was being driven in a rash and negligent manner by its driver as a result of which the accident occurred. A plea of contributory negligence on the part of the driver of other vehicle was also taken.

4. Learned Claims Tribunal after considering the pleadings, evidence and other material available on record, awarded Rs.13,84,500/- as total compensation to the claimants.
5. It is this award which is challenged by the claimants/appellants.
6. Learned counsel appearing for the Appellants/Claimants submits that the learned Claims Tribunal erred in not awarding any amount towards the loss of future prospects on the ground that the deceased on the date of accident was an employee of Infosys Technology Limited, Pune (Maharashtra) and working as salary paid employee in the post of Associate Consultant Vend 'C'. He further submitted that the Claims Tribunal have also erred in applying multiplier of 10 considering the age of parents of the deceased and not applying the multiplier on the basis of age of the deceased.
7. Per contra learned counsel appearing for the Insurance Company supported the award and have stated that learned Claims Tribunal have passed the impugned award after

considering all the facts and circumstances of this case and award passed by the Tribunal is just and proper.

8. I have heard the learned counsel for both the parties and perused the records.
9. Undisputably, deceased – Rohit Kumar Jain, was in the employment of the Infosys Technology Limited, Pune (Maharashtra) and on the date of accident he was aged about 28 years.
10. Income of the deceased has been provided by Ex.A-8 i.e., pay-slip/salary slip to be Rs.52,429/- per month after deducting Rs.2,76,000/- yearly. The learned Claims Tribunal have rightly deducted 50% towards personal expenses as the deceased was bachelor but erroneously applied multiplier of 10 while considering the age of parents for calculating the loss of income.
11. In the light of the aforementioned law the age of the deceased is to be taken for using the multiplier as provided in table as formulated in **Sarla Verma & Ors Versus Delhi Transport Corporation** reported in **2009 (6) SCC 121**. As the age of deceased on the date of accident was 28 years the correct multiplier to be applied as 17 in place of 10 as applied by Tribunal.
12. Learned Claims Tribunal have also erred in not considering the amount towards the future prospects of the deceased for which the claimants are also entitled in view of the decision rendered by

Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd Vs. Pranay Sethi** reported in **(2017) 16 SCC 680**.

13. For the reasons stated above the impugned award is modified by re-calculating the compensation as under.
14. The proved salary of the deceased was Rs.52,429/- per month which is also held by the learned Claims Tribunal and by adding 50% of the proved salary towards the future prospects. The yearly salary comes to Rs.4,14,000/-. As the deceased was unmarried on the date of accident and, therefore, the deduction towards his personal expenses is taken as 50%. After deducting 50% towards the personal expenses of the deceased, the yearly loss of income suffered by the Appellants/Claimants comes to Rs.2,07,000/-. By applying the multiplier of 17 to it, the total loss of income suffered by the Appellants/Claimants comes to Rs.35,19,000/-. As the deceased was unmarried, therefore, claimants will be entitled for an additional sum towards conventional head on account of loss of estate and funeral expenses only to the tune of Rs.30,000/-.
15. In view of the above the appellants/claimants will now, be entitled for Rs.35,49,000/- as total compensation instead of Rs.13,84,500/- as held by the learned Claims Tribunal. The amount of Rs.35,49,000/- will carry interest at the rate of 9% from the date of filing of application till its realization. Other conditions imposed by the learned Claims Tribunal with regard to the disbursement of the amount of compensation will remain intact.

16. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated hereinabove.

17. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

Brijmohan