

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 338 of 2016****Reserved on 03/10/2018****Delivered on 14.12.2018**

1. Jagdish Prasad @ Madan Dindore S/o Shri Shobharam Dindore aged about 62 years;
2. smt. Uttara Kumari w/o Shri Jagdish Prasad @ Madan Dindore aged about 47 years;

Both R/o Villiage Somaikala, P.S./Tahsil Saja District- Bemetara (C.G.).

---- Appellants

Versus

1. Gopaldas S/o Vishnu das Manikpuri aged about 35 years R/o Villiage Khapari (Durga) Post-Office Gadamore Tahsil & P.S. Navagarh District- Bemetara (C.G.).

(The driver of the offending Vehicle No. Hyba Truck No. C.G.- 28J-C-0105).

2. Rajvaram Yadav S/o Faliram Yadav aged about 49 years, R/o Villiage Gadamor Tahsil & P.S. Navagarh District- Bemetara(C.G.).

(The Registered owner of the offending Vehicle No. Hyba Truck No. C.G.- 28J-C-0105).

3. H.D.F.C. ERGO General Insurance Company Ltd., Through its Branch Manager, Devendra Nagar Road, Near to Vanijya Bhavan Raipur District Raipur(C.G.).

(The Insurance Company of the offending Vehicle No. Hyba Truck No. C.G.028J-C-0105).

---- Respondents

For Appellant	: Shri Samir Singh, Advocate
For Respondent No. 3	: Shri Rohitashav Singh, Advocate

Hon'ble Shri Justice Gautam Chourdiya
CAVJudgment

This is claimants' appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Bemetara (for short 'the Tribunal') in claim case No. 165/2014 vide award dated 31.10.2015.

2. Facts of the case leading to filing of claim petition are that on 09.07.2014, Ajay Dindore unmarried son of claimants was going by the motorcycle from Somaikala police station-Saza to Navagarh-mungeli road, when he reached village- gadamor, respondent No. 1-Gopal Das Manikpuri by driving offending vehicle truck bearing registration No. CG28-C-0105 rashly & negligently, dashed Ajay Dindore, as a result of which Ajay Dindore sustained multiple injuries and died on spot, at the time of incident the deceased- Ajay Dindore was about 31 years of age and was working as Shikshakarmi Grade-3 and his earning was Rs. 19680/- per month. In the instant case, appellants No. 1 & 2 are the parents of the deceased.

3. As against compensation of Rs. 63,00,000/- claimed by unfortunate parents of deceased-Ajay Dindore, aged about 31 years, by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 09.07.2014, the Tribunal awarded a total sum of Rs. 12,05,800/- as compensation along with simple interest @ 6 percent per annum from the date of application till its actual payment to the appellants/claimants.

4. The Tribunal, on a close scrutiny of the evidence led by both the parties, held : the accident had occurred due to rash and negligent driving of truck bearing registration No. CG28-C-0105 by its driver -Gopal Das Manikpuri rashly & negligently, who dashed Ajay Dindore, as a result of which he sustained multiple injuries and died on spot, at the time of incident the deceased- Ajay Dindore was about 31 years of age and was working as Shikshakarmi and his earning was Rs. 19680/- per month. Learned Tribunal, after considering the material available on record fastened the liability to pay compensation upon the respondent No. 1 & 2 jointly and severally. Insurance Company was exonerated of the liability to pay the compensation

7. The Tribunal, after appreciating the oral and documentary evidence, available on record and without giving any future prospect; awarded total sum of Rs.12,05,800 /- to the claimants along with interest @ 6% from the date of filing of claim petition till its actual payment. Hence this appeal has been filed by the claimants seeking enhancement of the compensation however, it is noteworthy to mention here that the appeal preferred by the owner i.e. MAC No. 1553/2015 has been dismissed for want of prosecution on 03.10.2018.

8. Learned counsel for the appellants/claimants would submit that the Tribunal has erred by not awarding the future prospect in view of the **National Insurance Co. Ltd. Vs. pranay Sethi** reported in **(2017) 16 SCC 680**. The learned Tribunal has further erred in applying the multiplier of 10 in place of 16 while calculating the compensation payable to the claimants in view of **Sarla Verma (Smt.) & Others V. Delhi Transport**

Corporation and anr. Reported in **2009(6) SCC121**. He also submits that the Tribunal has awarded a meager amount under the incidental head. Learned counsel for the appellant further submitted that Insurance Company wrongly exonerated by learned Tribunal no any document produced by the Insurance Company regarding the cancellation of policy. He also submits that one another appeal preferred by the owner i.e. MAC No. 1553/2015 has been dismissed for want of prosecution on 03.10.2018.

9. Learned counsel for the respondent opposes the arguments made by learned counsel for the appellants/claimants and submits that there is no need to interfere with the award passed by the Claims Tribunal.

10. I have heard learned counsel appearing for the parties and perused the impugned order including the record of Claims Tribunal.

11. Argument made by the learned counsel for the appellant that learned Tribunal wrongly exonerated the Insurance Company has no substance. As per award para 22 to 25 Tribunal has specifically mentioned all the Exs D/4, D/4-C, D/5, D/5-C and D/6 D/6-C D/1-A and document D/3 by which it stands proved that the accident happened on 09.07.2014 and insurance policy is cancelled due to dishonour of cheque given by the owner towards premium on 20.11.2013. Therefore, from the material available on record it is clear that prior to accident cancellation of policy was duly intimated to the owner and as such learned Tribunal has rightly exonerated the Insurance Company.

12. There is no dispute about the age of the deceased at the time of accident i.e. about 31 years, it is also not disputed that appellants No. 1 & 2 are the father & mother of the deceased. It is also not disputed by both the parties that the deceased was working as Shikshakarmi Grade-3 and earning Rs. 19680/- per month. In the mater of **Sarla Verma (Supra)** Hon'ble Apex Court while considering the issue of compensa-

tion where the dependents were the mother and father and the deceased was unmarried held that in such cases deduction towards personal living should be 50% and age of the deceased is to be considered and not the age of the dependents. The deceased was in Government job and was aged about 31 years, therefore, in view of the decision of Hon'ble Supreme Court Judgment **Pranay Sethi (Supra)**, 50% of the annual income should be added thereto towards future prospect.

13. Thus keeping in view the decision rendered by the Supreme Court in the matter of **Pranay Sethi (Supra)**, **Sarla Verma (Supra)**, I propose to re-compute the amount of compensation as under :-

Sl. No.	Heads	Calculation
01.	Income of the deceased	Rs.19680x12= 236160/-
02.	50% of above to be added towards future prospects	Rs.236160+ 118080 = Rs. 354240
03.	1/2th deduction towards personal and living expenses of the deceased	Rs. 354240/2= 177120/-
04.	Multiplier of 16 to be applied	Rs.177120x16= Rs. 2833920/-
05	Towards loss of estate, and for funeral expenses	Rs.15,000+15,000= 30,000/-
	Total compensation	Rs.28,63920/-

13. Since, the Tribunal has already awarded a sum of Rs. 12,05,800/- after deducting the same from the amount as calculated above, the claimant is held for an additional compensation of Rs. 16,58,120/-. This additional amount shall carry interest at the rate of 6% per annum from the date of claim application till its realization. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

14. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita