

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 842 OF 2012**Judgment reserved on: 19/06/2018Judgment delivered on: 04/07/2018

1. Raju Dhruv, Age-22 years, S/o Late Chamru Dhruv, By Caste-Gound
2. Ashok Kumar Dhruv, Age-19 years, S/o Late Chamru Dhruv, By Caste-Gound,
Both are R/o Village- Arjuni, P.S. & Tahsil- Pithora & Distt. Mahasamund [C.G.]
3. Smt. Santoshi Bai, Age-24 Years, W/o Lekeshwar Dhruv, By Caste-Gound,
R/O Village- Dargaon, Tahsil-Baghbahra & Distt. Mahasamund [C.G.]

.....Appellants**Versus**

1. Pradeep Kumar Patel, Age-35 Yrs., S/o Harishankar Patel, R/o Village-Arjuni, P.S. & Tahsil- Pithora & Distt. Mahasamund [C.G.]
[Driver-Cum-Owner of Mahindra Tractor No. C.G./04/DM/5598]
2. The IFFCO-TOKIO General Insurance Company Limited, Through-Divisional Office, at Lal-Ganga Shopping Mall, 3rd Floor, G.E. Road, Raipur, Distt. Raipur [C.G.]
[Ins.Com. of Tractor No. C.G./04/DM/5598]

.....Respondents

For Appellants	:	Mr. J. A. Lohani, Advocate
For Respondent No. 1	:	None
For Respondents No. 2	:	Mr. Amrito Das, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**C A V Judgment**

1. The appellants/claimants who are unfortunate children of deceased Rukhmani Bai Dhruv have challenged the impugned award dated 31/07/2012 passed by learned Motor Accident Claims Tribunal, Mahasamund (C.G.) (in short 'the

Claims Tribunal') in Claim Case No.11/2011, whereby the learned Claims Tribunal had awarded only Rs.1,02,000/- as total compensation on account of the death of a mature women, aged about 55 years.

2. Brief facts of the case are that on 10/10/2010, the respondent No. 1 who was driver-cum-owner of the Mahindra Tractor (offending vehicle) bearing registration No. CG 04/DM/5598 by his rash and negligent act while driving the offending vehicle have dashed the deceased Rukhmani Bai Dhruv (pedestrian), due to which, she suffered multiple grievous injuries on her person. Thereafter, she was taken to Primary Health Center, Pithora, where, she was declared dead. Criminal Case No.711/2010 was registered against the respondent No. 1 under Section 304 (A) IPC.
3. The appellants, who are children of the deceased Rukhmani Bai have filed a claim application before the competent Claims Tribunal claiming Rs.7,90,000/- in total on account of accidental death by motor vehicle and also for granting the amount towards the no fault liability during the pendency of main claim application.
4. The respondent No. 1 has admitted his description as owner of vehicle No. CG 04/DM/5598 made by the appellants/claimants and has denied all other pleadings made in the claim application. Further, the respondent No. 1 had stated that no accident occurred from his vehicle and also denied that the appellants/claimants are children of the deceased. The respondent No. 1 owner-cum-driver of the offending vehicle have also taken plea that on the date of accident, the offending vehicle was insured with the respondent No. 2, i.e. Insurance Company and if the learned Claims Tribunal found that the accident occurred and there was any liability for payment of compensation, it would be on the respondent No. 2/Insurance Company as on the date of accident, the

offending vehicle was insured with the respondent No. 2/Insurance Company for a period of one year from 22/06/2010 to 21/06/2011.

5. The respondent No. 2/Insurance Company had submitted the reply, in which, it was admitted the fact that the offending vehicle i.e. Mahindra Tractor (offending vehicle) bearing registration No. CG 04/DM/5598 was insured by the Insurance Company for a period of one year from 22/06/2010 to 21/06/2011 and denied rest of the pleadings made in the claim application. The respondent No. 2/Insurance Company had further taken a plea that on the date of accident, there was violation of the conditions of the Insurance Policy as on the date of accident, the driver of the offending vehicle was not possessed a valid and effective driving licence to drive the offending vehicle.
6. Considering the entire material available on record, the learned Claims Tribunal arrived at a conclusion that the death of deceased Rukhmani Bai Dhruv occurred due to accident by Mahindra Tractor (offending vehicle) bearing registration No. CG 04/DM/5598 and awarded an amount of Rs.1,02,000/- as total compensation. The learned Claims Tribunal fastened the liability on the respondents No. 1 & 2 jointly and severally holding that on the date of accident, the offending vehicle was insured with the respondent No. 2/Insurance Company and also that there was no violation of the conditions of the Insurance Policy on the date of accident.
7. It is this award, which was challenged by the appellants/claimants before this Hon'ble Court on the ground that the learned Claims Tribunal committed an error in awarding very meager amount of compensation to the sum of Rs.1,02,000/- on account of death of their mother, who on the date of accident, was aged about 55 years.

8. Learned counsel for the appellants/claimants vehemently argued that the gross illegality have been committed by the learned Claims Tribunal in assessing the income of the deceased as Rs.15,000/- per annum (notional income) for accidental death of the year 2010. He further argued that the learned Claims Tribunal committed an error in awarding only Rs.22,000/- towards conventional heads and it needs to be enhanced suitably.
9. Per contra, learned counsel appearing for respondent No. 2/Insurance Company have supported the award passed by the learned Claims Tribunal and admitted that as the appellants failed to prove the income of the deceased, the learned Claims Tribunal have rightly assessed the compensation.
10. I have heard the learned counsel appearing for the appellants/claimants and learned counsel appearing for respondent No. 2/Insurance Company and perused the entire record carefully.
11. The appellants/claimants in their claim application have very specifically pleaded that the deceased on the date of accident, was aged about 55 years and earning Rs.100/- per day by doing labour work, but the learned Claims Tribunal without assigning any reason and only on the basis of presumption, had held that the appellants/claimants failed to prove the income of the deceased and had assessed the income of the deceased as Rs.15,000/- per annum (notional income) as mentioned in Schedule of the Motor Vehicles Act, 1988. While assessing the income of the deceased on the date of accident, the learned Claims Tribunal committed gross illegality in not considering the age of the deceased and their place of residence and also the status as pleaded and stated in evidence by the claimants and ought to have considered the same unless and until some contrary piece of evidence would have been placed on record by the respondents.

12. On considering the facts and circumstances of the present case, on the date of incident, the deceased is a lady, aged about 55 years and mother of the claimants. In the natural course of her life, the women and mother in the family have to work in the house like cooking foods, cleaning, dusting, washing utensils and clothes and also taking care of all the family members in all respects apart from the work, which she do for earning livelihood. Looking to the aforementioned aspect and life of a women discharging her duties as the mother, in addition to the earning of wages for livelihood, the income pleaded by the claimants cannot be said to be on higher side. The women played a dual role, one as home maker and other also as one of the earning member of the family. Even on considering that the deceased was a non working women, it cannot lost sight of the fact women and in this case, mother being a home maker works from early morning till late night, her working hours are more than any workmen. For assessment of compensation payable on account of her sad demise, no gender bias can be made in the capacity of their earning and helping the family as a home maker or helping family by adopting the means of earning by doing labour work and others. The issue with regard to the assessment of the income of the house wives have been dealt with by the Hon'ble Apex Court in the matters of ***Lata Wadhwa and Others v. State of Bihar and Others*** reported in ***AIR 2001 SC 3218*** and ***Arun Kumar Agrawal and Another v. National Insurance Company Limited and Others*** reported in ***(2010) 9 SCC 218***.
13. Considering the observations as made by the Hon'ble Apex Court in ***Lata Wadhwa (supra)*** and ***Arun Kumar Agrawal (supra)*** and also considering the facts and circumstances of the case, I hold the income of the deceased on the date of accident to Rs.3,000/- per month i.e. Rs.36,000/- per annum. By adding 15% of the aforesaid income, the yearly income of the deceased comes to Rs.41,400/-. Looking to the number of claimants, 1/3rd is to be deducted towards her personal expenses from the income of the deceased, which comes to

Rs.13,800/- and after deducting the personal expenses from the yearly income, the loss of income suffered by the claimants would be Rs.27,600/-. The learned Claims Tribunal committed an error in applying the multiplier of 8, which is erroneous in the facts and circumstances of the case and the multiplier of 11 would be applicable in the age group between 51 to 55 (as the deceased was aged about 55 years held by the learned Claims Tribunal). Therefore, by applying the multiplier of 11, the total loss of income comes to Rs.3,03,600/-. The claimants are also entitled for Rs.70,000/- towards the other conventional heads.

14. On the basis of the above calculation, award passed by the learned Claims Tribunal is modified accordingly and now the appellants/claimants are held entitled for total compensation of Rs. 3,73,600/- (3,03,600 + 70,000). Since the Claims Tribunal has already awarded Rs.1,02,000/-, after deducting the same, the appellants/claimants are entitled for additional compensation to the sum of Rs.2,71,600/-. This amount of compensation shall carry interest @ 6% per annum as awarded by the Claims Tribunal from the date of filing of the claim petition till its realization.
15. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated herein-above.
16. No order as to costs.

Sd/-

(Parth Prateem Sahu)
Judge