NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 808 of 2013

1. Hriday Lal (wrongly mentioned in the impugned award as Haday Lal Patel) S/o Chamar Singh, aged about 60 years, Occupation-Dependent.

2. Malti Bai W/o Hriday Lal Patel (wrongly mentioned in the impugned award as Hridayal Lal Patel) Aged About 58 Years.

3. Kamla Bai, Wd/o Purohit @ Prohit Patel, Aged About 33 Years, Occupation-Housewife,

   All three R/o village Bhelvadih, P.S. & Tahsil Kharsia, Distt. Raigarh (CG)

4. Lokeshwari (Minor), D/o Late Purohit @ Prohit Patel (inadvertently 'late' not mentioned in the impugned award) aged about 16 years, Occupation-Student.

5. Lokesh (Minor) S/o Late Purohit @ Prohit Patel (wrongly 'Prohat') Aged About 7 Years

   Both Minors, Through their natural guardian mother Kamla Bai, Wd/o Purohit Patel (wrongly "Purahit"), all residents of Village & P.S. Kalmi, Tahsil & Distrit Raigarh (CG)

---- Appellants
Claimants

Versus

1. Munubabu, S/o Raghunath Sidar, R/o Barmuda, Tahsil & District Raigarh (CG), Occupation-Driver, R/o Barmuda, Tahsil & District Raigarh (CG) Occupation-Driving, Presently R/o Purani Basti, Kumhari, P.S. Rampur, Distt. Korba (CG)

2. Mohammad Najimuddin, S/o Tajuddin, R/o Prem Nagar, Raigarh, Tahsil & District Raigarh (CG)

3. Reliance General Insurance Company, Anil Dhirubhai Ambani Group, Through Branch Manager, Branch Office At Rahul Complex, Above Axis Bank, Dhimrapur Chowk, Raigarh, Tahsil & District Raigarh (CG)

---- Respondents

For Appellants	:	Shri Rajkumar Pali, Advocate.
For Respondent	:	Shri Saurabh Sharma, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

26/11/2018

1. The claimants/appellants have preferred this appeal assailing the impugned award dated 1.4.2013 passed by the learned 1st Additional Motor Accident Claims Tribunal, Raigarh (for short 'the Claims Tribunal') in Claim Case No.712/13 whereby the Claims Tribunal has awarded compensation of Rs.3,87,000/- to the claimants/appellants herein on account of accidental death of one Purohit @ Prohit Patel.
2. Facts of the case, in brief, are that on 17.10.2010 at about 2 p.m. Prohit Patel was going to the place of his duty from home and when he reached near Lakha Seema Road, one Pick-up vehicle bearing registration number CG13-A-7840, which was being driven by respondent No.1 in a rash and negligent manner, dashed against him as a result of which he sustained grievous injuries on various parts of his body including head and died instantaneously. Claimants/appellants herein, who are widow, children & parents of the deceased, have filed a claim application claiming compensation to the tune of Rs.41,48,600/- under various heads on the ground that all of them were dependent on the earning of the deceased and due to his untimely death, they have been deprived of the dependency. In the claim application, they have pleaded that on the date of accident, the deceased was 34 years old, he was working as 'Loader Operator' in Papuri Plant Tech Pvt. Ltd, Taraimal, Raigarh (CG) and getting salary of Rs.6,200/- per month. The deceased was also doing agriculture work and earning Rs.2 lakhs per annum.
3. Respondent No.1 & 2, owner & driver of offending vehicle, filed their reply

to the claim application and stated that the claim of compensation filed by the claimants is highly exaggerated and that on the date of accident, the offending vehicle was fully insured and therefore respondent No.3-insurance company is liable to pay the compensation, if any awarded by the Claims Tribunal.

4. Respondent No.3 Insurance Company filed its separate reply and denied the claim of claimants/appellants. It has been pleaded that there was violation of the condition of insurance policy as on the date of accident the driver of offending vehicle was not having valid and effective license to drive the offending vehicle. Therefore the insurance company is not liable for making payment of compensation, if any, to the claimants.

5. The Claims Tribunal after considering the pleadings and evidence placed on record (oral and documentary both) by the respective parties has partly allowed the claim of the claimants/appellants and awarded compensation of Rs.3,87,000/- with interest @ 6% per annum. While partly allowing the claim application, learned Claims Tribunal had arrived at a conclusion that there was no violation of any of the conditions of insurance policy and that death of deceased Purohit Patel took place in a road accident with the offending vehicle bearing No.CG13-A-7840. However, the Claims Tribunal disbelieved the monthly income of the deceased, as claimed by the claimants, for want of cogent & clinching evidence and calculated the compensation taking income of Rs.36,000/- per annum. The Claims Tribunal applied the multiplier of 15 on the basis of age of deceased mentioned in the post-mortem report i.e. 40 years. After making necessary deduction and after adding towards the loss of estate, loss of love & affection and funeral expenses, the compensation, as mentioned above, was awarded.

6. Learned counsel for the appellants contended that the Claims Tribunal has not considered the evidence and material available on record in an objective manner and awarded meagre compensation. Though the claimants have examined Shiv Shankar (AW-3), who was working as Accountant in Popuri Plant, Taraimal, Raigarh and also produced the salary certificate (Ex.P-5) issued by the employer of the deceased indicating the salary of the deceased as Rs.6,200/- per month, but the Claims Tribunal ignored the said evidence and took the income at Rs.3,000/- per month i.e. Rs.36,000/- per annum for calculating the compensation. He further submits that the Claims Tribunal has not awarded any amounts towards future prospectus of the deceased. It is vehemently submitted that the Claims Tribunal has wrongly taken the age of the deceased as 40 years as mentioned in the post-mortem report ignoring FIR (Ex.A-2) and claim application where the age of deceased is mentioned as 34 years and thereby committed an error in applying the multiplier of 15. Likewise, the Claims Tribunal has awarded meagre amount towards other conventional heads.

7. Learned counsel appearing for respondent No.3 has supported the impugned award. He has submitted that the appellants have not placed on record any documentary evidence showing the age of deceased to be 34 years on the date of accident. No reliable piece of evidence has been brought on record with respect to employment of the deceased with said Popuri Plant. Under these circumstances, the Claims Tribunal has rightly assessed the income of the deceased and awarded compensation to the claimants/appellants herein.

8. I have heard learned counsel for the claimants/appellants and perused the record.

9. From perusal of the contents of FIR dated 18.1.2010 (Ex.A-2), whereas accident occurred on 17.1.2010, it would reveal that in FIR itself it has been mentioned that at the time of accident the deceased was going to the plant on his duty on his own vehicle. In the claim application also it has been specifically pleaded that on the date of accident the deceased was working as 'Loader Operator' in Popuri Plant Tech. Pvt. Ltd., Raigarh on the monthly salary of Rs.6,200/-. A certificate of salary (Ex.P-5) dated 17.2.2010 issued by the Vice-President, Popuri Plant was also filed by the claimants. The appellants have also examined Shiv Shankar (AW-3), who was working as Accountant in said Popuri Plant, and he has categorically stated in his statement that the deceased was working in the Popuri Plant since 2004. True it is that the salary certificate (Ex.A-5) could not be proved by examining its author, but at the same time it could not be lost sight of fact that in the FIR (Ex.A-2) lodged immediately after the accident, it has been specifically mentioned that on the date of accident the deceased while going to Singhal Factory, Taraimal met with an accident. Papuri Plant is shown to be unit of Singhal Enterprises in Ex.P-5. As this FIR has been lodged on the next day of the accident immediately, therefore, there can't be any occasion for placing wrong fact in FIR or creating a ground afterthought.

10. It is well-settled law that the amount of compensation cannot be a bonanza but at the same time it has to be seen that the claimants under the Motor Vehicles Act should be awarded a reasonable amount of compensation particularly in the fatal accident and permanent disability cases. The Motor Vehicles Act is a beneficial piece of legislation which demands just compensation in the facts and circumstances of each case.

11. In the light of the object of the Act of 1988 if we peruse the material and

evidence available on record, it would show that employment in factory cannot be said to be an afterthought fact narrated by the claimant. It is also not to be ignored that the claimants are poor and not much literate persons but even then atleast they made an effort to bring into witness box AW-3 who was said to be 'Accountant' of the factory where deceased was working and who stated that the deceased was working as 'Loader Operator'.

12. The afore-mentioned evidence on record appears to this Court is sufficient to hold that the deceased was employed with Papuri Plant, Taraimal, Raigarh. Though proper evidence with respect to salary was not brought on record to prove the salary certificate.

13. Now the next question arises before this Court for consideration is in view of the above evidence and material available on record what would be appropriate income of the deceased to be taken into consideration for calculating the amount of compensation to be awarded to the appellants herein, who are wife, children and parents of the deceased.

14. In **Rajesh & others vs. Rajbir Singh & others** reported in **(2013) 9 SCC 54** the Hon'ble Supreme Court has dealt with the expression 'just compensation' and held as under:-

> “5.The expression “just compensation” has been explained in Sarla Verma Case, holding that the compensation awarded by a Tribunal does not become just compensation merely because the Tribunal considered it to be just. “Just Compensation” is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far

> as money can do so, by applying the well-settled principles relating to award of compensation........"

15. In **Jakir Hussein vs. Sabir & ors** reported in **(2015) 7 SCC 252** the Hon'ble Supreme Court while dealing with a case for enhancement of award with respect to death of a driver in a motor accident calculated the annual income of the deceased in following manner;-

> "14.We have carefully examined the facts of the case and material evidence on record in the light of the rival legal contentions urged before us by both the learned counsel on behalf of the parties to find out as to whether the appellant is entitled for further enhancement of compensation? We have perused the impugned judgment and order of the High Court and the award of the Tribunal. After careful examination of the facts and legal evidence on record, it is not in dispute that the appellant was working as a driver at the time of the accident and no doubt, he could be earning Rs.4,500/- per month. As per the notification issued by the State Government of Madhya Pradesh under Section 3 of the Minimum Wages Act, 1948, a person employed as a driver earns Rs.128/- per day, however the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage, as per State Government Notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index. Therefore, we are of the view

that it would be just and reasonable to consider the appellant's daily wage at Rs.150/- per day (Rs.4,500/- per month i.e. Rs.54,000/- per annum) as he was a driver of the motor vehicle which is a skilled job. Further, the Tribunal has wrongly determined the loss of income during the course of his treatment at Rs.51,000/- for a period of one year and five months. We have to enhance the same to Rs.76,500/- (Rs.4,500 X 17 months)."

16. In the light of afore-mentioned facts, evidence and dictum of the Hon'ble Apex Court, it appears that the Claims Tribunal has failed to consider the oral and documentary evidence on record with respect to the employment and income of the deceased in its proper perspective and therefore arrived at a wrong conclusion. Hence, the finding recorded by the Claims Tribunal regarding income of the deceased is liable to be set aside and is hereby set aside.

17. In view of above evidence I find that there are material available on record to accept that the deceased was working with Papuri Plant, Taraimal, Raigarh as 'Loader Operator'. Looking to the date of accident i.e. 17.10.2010 and the place of engagement of deceased i.e. a factory in industrial area of Chhattisgarh, I hold the income of the deceased to be Rs.4,500/- per month.

18. It is well settled that where the number of dependent family members is 4 to 6, the deduction towards personal and living expenses of the deceased should be one-fourth. In the present case, though the number of dependent family members is 4 to 6, but the Claims Tribunal has deducted one-third towards personal expenditure of the deceased in place of one-fourth.

19. The Claims Tribunal had taken the age of deceased as 40 years on the basis of age mentioned in the post mortem report (Ex.A-4), which cannot be said to be the exact age of the deceased as it does not mention of arriving on the basis of any known method of calculation, more so, when the appellants in their claim application as well as in FIR (Ex.A-2), which is immediate information on the very next day of the accident, have mentioned the age of deceased as 34 years. Therefore it would be appropriate to conclude that on the date of accident the deceased would be in between the age group of 35-40 years.

20. In view of above discussions, this Court propose to recalculate compensation amount payable to the claimants/appellants.

21. As it has been held above that income of the deceased on the date of accident was Rs.4,500/- per month and the age of the deceased was less than 40 years, therefore, in view of the law laid down in the matter of Pranay Sethi (supra), the income of the deceased is required to be enhanced by 40% towards future prospects and thereby the monthly income of the deceased for the purpose of calculating the compensation comes to Rs.6,300/- per month (4500+1800). Having regard to the number of members in the family (5 members), one-fourth should be deducted towards personal living expenses of the deceased in view of the decision of the Hon'ble Apex Court in Sarla Verma vs. Delhi Transport Corporation & another reported in (2009) 6 SCC 121. Therefore, after deduction of one-fourth towards personal expenses, the loss of annual contribution to the family comes to Rs.56,700/- (6300 - 1/4th x 12). As on the date of accident the deceased was less than 40 years of age, the multiplier of 15 would be applicable. By applying the multiplier of 15 to the annual income of the deceased, the total loss of dependency would come to Rs.8,50,500/- (56700x15). Besides this, the claimants/appellants are

also entitled for a lump sum amount of Rs.70,000/- under the conventional heads. Thus, the claimants/appellants are entitled to a total compensation of Rs.9,20,500/- (850500+70000). This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact.

22. Any amount paid by respondents towards compensation shall be adjusted from the total amount of compensation as calculated above.

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

Sd/-
(Part Prateem Sahu)
Judge

roshan/-