NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 24.07.2019

Order pronounced on 19.12.2019

MAC No. 123 of 2013

1. Smt. Girni Bai Dhruv, aged about 45 years, Wd/o Padman Dhruv,
2. Tinku S/o Padman Dhruv, aged about 17 years, Minor, Through- Natural Guardian Mother - Smt. Girni Bai Dhruv/appellant No.1.
3. Deva Dhruv S/o Padman Dhruv, aged about 22 years,
4. Amin S/o Padman Dhruv, aged about 20 years,

   All R/o Village – Kendri, P.S. Abhanpur, District Raipur, Chhattisgarh.

---- **Appellants/Claimants**

Versus

1. Ramesh Kumar Sahu, aged about 42 years, S/o Vishal Ram Sahu R/o Near Bakra Market, Sanjay Nagar, Tikrapara, District Raipur, Chhattisgarh. **(Driver of Vehicle)**
2. Ramlochan Mishra, S/o Ramnarayan Mishra, R/o Santoshi Nagar Chowk, P.S. Tikrapara, District Raipur C.G. **(Owner of Vehicle)**
3. Shriram Gen. Insu. Co. Ltd., Through- Divisional Manager/Officer, Shriram Gen. Insu. Co. Ltd., Lalganga Shopping Mall, G.E. Road, Raipur, Tah. And District. Raipur C.G. **(Insurer of Vehicle)**

---- **Respondents**

For Appellants : Mr. Amiyakant Tiwari, Advocate.

For Respondents : Mr. Pankaj Agrawal, Advocate.

WITH

MAC No. 270 of 2013

- Shriram Gen. Insu. Co. Ltd., Through- Divisional Manager/Officer, Shriram Gen. Insu. Co. Ltd., Lalganga Shopping Mall, G.E. Road, Raipur, Tah. And District. Raipur C.G. (Insurer of Truck No.CG 04 G 6146).

---- **Appellant/Non-applicant No.3**

Versus

1. Smt. Girni Bai Dhruv, Wd/o Padman Dhruv, aged about 45 years
2. Tinku S/o Padman Dhruv, aged about 17 years, Minor, Through his Natural Guardian Mother - Smt. Girni Bai Dhruv/respondent No.1.
3. Deva Dhruv S/o Padman Dhruv, aged about 22 years,
4. Amin S/o Padman Dhruv, aged about 20 years,

   All are R/o Village – Kendri, P.S. Abhanpur, District Raipur, Chhattisgarh. **Claimants**

5. Ramesh Kumar Sahu, S/o Vishalram Sahu, aged about 42 years, R/o Near Bakra Market, Sanjay Nagar, Tikrapara, Raipur, Distt. Raipur C.G. (Driver of Truck No.CG-04-G-6146).
6. Ramlochan Mishra S/o Ramnarayan Mishra, aged about 39 years, R/o Santoshi Nagar Chowk, P.S. Tikrapara, District Raipur C.G. (Owner of Truck No.CG-04-G-6146).

---- Respondents/Non-applicants No.1 & 2.

For Appellant : Mr. Pankaj Agrawal, Advocate.

For Respondents No.1 to 4: Mr. Amiyakant Tiwari, Advocate.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

As both these appeals arise of the award dated 06.11.2012 passed by Third Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.162/2011, they are being disposed of by this common judgment.

2. The claimants/appellants have preferred appeals for enhancement of compensation awarded by the Tribunal while the appellant/Insurance Company has filed appeal against liability for payment of compensation awarded.

3. As per claim petition, on 20.04.2010 deceased Padman Dhruv aged about 49 years, earning Rs.5000/- per month as Cleaner, was coming in the offending vehicle bearing Registration No. CG-04-G-6146 as a cleaner of the truck, when the vehicle reached near Mana Camp at about 9:30 AM, the respondent No.1 – Ramesh Kumar Sahu drove the vehicle rashly and negligently and dashed against the bullock cart and turn turtle. As a result thereof deceased Padman suffered grievous injuries and died. At the time of accident, the offending truck was owned by non-applicant No.2 – Ramlochan and insured with non-applicant No.3 – Insurance Company.

4. On claim petition being filed by the Claimants under Section 166 of the Motor Vehicle Act, the Tribunal considering the overall evidence on record passed the impugned awarded granted a total compensation the of Rs.2,54,000/- with interest 6% P.a. from the date of application till realization in favour of the claimants fastening the liability of non-applicant No.3 – Insurance Company.

As regards MAC No.270/2013.

5. Learned counsel for the appellant – Insurance Company submits that on the date of accident the driver of the offending vehicle was not having a valid and effective driving licence. He also submits that deceased was a Cleaner and was a gratuitous passenger. Furthermore, as respondents No.3 and 4 are married and are maintaining the family, therefore, there was no contribution of deceased in maintaining the family members, therefore, loss of dependency could have not been granted to the claimants.

6. On the other hand, learned counsel for the claimants supports the impugned award in so far as it relates to fastening of liability on the Insurance Company.

7. Heard counsel for the parties and perused the material available on record.

8. The Insurance Company has not adduced any oral or documentary evidence to establish that the driver of offending vehicle was not having valid driving licence, therefore, the Insurance Company cannot be exonerated from its liability to pay the compensation.

9. It is established from the material available on record that the accident took place by the offending vehicle was duly insured with appellant/Insurance Company. The deceased suffered grievous injuries in the accident in question and died on spot.

10. It is settled law that the Insurance Company cannot be absolved of its liability to pay compensation of the policy. It has failed to prove that the owner of the vehicle had committed any negligence or had not taken reasonable care in the matter of fulfilling the condition of the policy regarding used of vehicles by a duly licenced driver while employing the driver of the vehicle. The observation of the Supreme Court in paragraphs 110 (iii) and (vi) in **National Insurance Company Ltd Vs. Swaran Singh and others** reported in **(2004) 3 SCC 297** : 2006 (4) ACCD 240 (SC) relevant for the purpose and reproduced below :-

> **"(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.**
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> **(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act."**

11. In view of the aforesaid the argument of the learned counsel for the appellant/Insurance Company relating to driving licence unfounded and stands rejected.

<u>As regards MAC No.123/2013</u>

12. Learned counsel for the appellants/claimants submits that incomes of the deceased has wrongly been considered by the Tribunal and no amount towards future prospects has been granted to the claimants. He further submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. Furthermore, no amount towards loss of parental consortium has been awarded.

13. On the other hand, learned counsel for the respondent/Insurance Company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

14. No counter appeal has been filed by the respondents No.1 and 2 - driver and owner of the vehicle bearing Registration No. CG-04-G-6146, as submitted by counsel for the parties.

15. Heard counsel for the parties and perused the material available on record.

16. Applying the principles regarding assessment of annual income as laid down by the Apex Court in **Laxmi Devi and others Vs. Mohammad Tabbar and another** reported in **(2008) 12 SCC 165**, the Tribunal ought to have considered Rs. 100/- per day or 3,000/- per month in the absence of any evidence, taking the deceased to be an unskilled labourer. Computing on the basis of this the annual income figures out to be Rs. 36,000/-.

17. I find the assumption of income by Tribunal as 36,000/- of the deceased is in accordance with the principle of Law laid down in Laxmi Devi (Supra) in which Apex Court has up held the decision of the High Court to take monthly Income of Rs. 3,000/- per month, considering the escalation of prices etc. Thus, in my opinion, the in present case also the monthly income should be taken as Rs. 3,000/- even though there was no evidence led to prove actual monthly income.

18. The Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in (**2017) 16 SCC 680** : 2017 (4) ACCD 2106 (SC):-

Para 59.

Now coming to the aspect of future prospects and claim of compensation in that head for those who are self employed. This issue is no more *res integra***.** The Apex Court in Pranay Sethi (Supra) vide paras 56 and 57 has held thus:-

> **"56. The seminal issue is the fixation of future prospects in cases of deceased who is self employed or on a fixed salary. Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. reported in 2009 (6) SCC 121 has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not per se allowed any future prospects in respect of said category.**
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> **57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance ones**

income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."

Ultimately, the Court vide para 59 concluded thus:-

"59. In view of the aforesaid analysis, we proceed to record our conclusion:-

"59.1. The two judge Bench in Santosh Devi Vs. National Insurance Co. Ltd. (2012) 6 SCC 421 : 2012 (a) ACCD 973 (SC) should have been well advised to refer to matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma a judgment by a co-ordinate Bench. It is because a co-ordinate Bench of the same strength cannot take a contrary view than what has been held by another co-ordinate Bench.

> **"59.2. As Rajesh Vs. Rajbir Singh (2013) 9 SCC 54 2013 (2) ACCD 969 (SC) has not taken note of the decision in Reshma Kumari which was delivered at earlier point of time, the decision of Rajesh (Supra) is not a binding precedent.**
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> **59.3 While determining the income, an addition of 50 % of actual salary to the income of the deceased towards future prospects, where the deceased has a permanent job and was below of age of 40 years, should be made. The addition should be 30 % of the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years the addition should be 15 % actual salary should be read as actual salary less tax.**
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> **59.4 In case the deceased was self-employed or on a fixed salary an addition of 40 % of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25 % where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.**
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> **59.5 For determination of the multiplicand, the deduction for personal and living expenses, the Tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinabove.**
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> **59.6 The selection of multiplies shall be as indicated in the table in Sarla Verma read with paragraph 42 of that judgment.**
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> **59.7 The age of the deceased should be the basis for applying the multiplier.**
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> **59.8 Reasonable figures on conventional heads, namely loss of estate loss of consortium an funeral expenses should be Rs. 15,000/-, 40,000/- and 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10 % in every three years."**

19. The above legal position has not been disputed and the compensation therefore, is to be awarded after its computation in terms of the judgment in S**arla Verma and others Vs. Delhi Transport Corporation and another**, **(2009) 6 SCC 121 : 2009 (2) ACCD 924 (SC)** and **Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65 : 2013 (2) ACCD 977 (SC)** in the light of observations made and directions issued by the Apex Court in constitution Bench. Judgment in Pranay Sethi (Supra).

20. Hence, considering the age of the deceased in the present case as per the findings of the Tribunal as 49 years, I am of the opinion that 25 % of the income should be added towards future prospects.

21. In Pranay Sethi (Supra) the constitution Bench vide para 52 held thus :-

> **"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. *[(2013) 9 SCC 54]* It has granted Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi *[(2012) 6 SCC 421]* it does not seem to follow the same. The conventional and traditional heads, needless to say cannot be determined on percentage basis because that would not be an acceptable criteria on unlike quantification of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index fall in bank interest escalation of rates in many a field have to be noticed. The Court cannot remain obvious to the same. There has been a thumb rule in this aspect. Otherwise there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the Tribunals and Courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely Loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The principle or revisiting the said heads is an acceptable principle. But the revisit should not be fact centric or quantum – centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three year and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."**

22. Accordingly, I direct that towards the loss of estate, love and affection and funeral expenses Rs. 70,000/- respectively shall be paid as compensation.

23. On the point of deduction from income towards personal expense also the law is almost settled by the constitution Bench vide para 59.5 the Bench has approved paras 30 to 32 of judgment in Sarla Verma (supra). Paras 30, 31 and 32 of the judgment in Sarla Verma (supra) runs as under:-

> **"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra (2003) 3 SLR (R) 601, the general practice is to apply standardized deduction. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third(1/3 rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where of number of defendant family members is 4 to 6 and one-fifth(1/5th) where the number of dependent family members exceeds six.**
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> **31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors normally 50% is deducted as personal and living expense, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of this getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brother and sister will not be considered as dependents because they will either be independent and earning, or married or be dependent on the father.**
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> **32.Thus, even if the deceased is survived by parents and siblings, only the mother would be considered to be dependent, and 50% would be treated as personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income to the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses, may be restricted to one-third and contribution to the family will be takes as two third."**

24. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.5000/- per month as paint but no documentary or oral evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income. The income of deceased in considered as Rs.3000/- per month as per minimum wages at the relevant time, further, considering the age of the deceased, the dependency, the nature of his job and decisions of the Hon'ble Supreme Court in Sarla Verma (Supra) the claimants are held entitled for compensation in the following manner :-

Age of deceased	-	49 years
Notional income	-	Rs.36,000/- PA (Rs.3000 x 12)
Further prospects	-	Rs.3,750/- [(25% of Rs.3000) Rs.3000+750]
Total income (Annual)	-	Rs.45000/- (Rs.3750x12)
Deduction towards personal expenses	-	1/3
dependency	-	Rs.30,000/-
Multiplier	-	13
Compensation	-	30,000 x 13 = Rs.3,90,000/-
Loss of love and affection and consortium	-	Rs.40,000/-
funeral expenses	-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
Total compensation	**-**	**Rs.4,60,000/-**

25. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,54,000/- to Rs.4,60,000/- with simple interest at the rate of 6 % percent per annum from the date of presentation of petition to the actual payments.

26. In view of the above, the appeal being MAC No.123/2013 filed by the claimants stands **allowed** and the appeal being MAC No. 270/2013 filed by the Insurance Company is **dismissed**. The compensation awarded to the claimants/appellants under the order of Tribunal is accordingly enhanced and award stands modified to the extent indicated here-in-above.

Sd/-

(Vimla Singh Kapoor)
Judge

Ajay/Pawan