

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 810 of 2014**

1. Minor Kalawati D/o Late Jadman Singh, Aged About 16 Years
2. Minor Lilawati D/o Late Jadman Singh, Aged About 16 Years
3. Minor Rekhabai D/o Late Jadman Singh, Aged About 14 Years
4. Minor Satyanarayan D/o Late Jadman Singh, Aged About 2 Years
5. Smt. Bimla Devi W/o Late Jadman Singh, Aged About 40 Years, Caste Khairwar

Appellant No. 1 to 4 through Next friend mother Smt. Bimla Devi, All R/o village Girla, Tahsil & District Jashpur (C.G.) P.S. Jashpur Civil & Revenue District Jashpur (C.G.)

---- Appellants**Versus**

1. Ajay Kumar Gupta S/o Hariprasad Gupta, Aged About 55 Years, Caste Raoniyaar, R/o Village College Road, Jashpurnagar, Police Station & District Jashpur (C.G.)
2. The Oriental Insurance Company Limited, Local Branch Office, P.S. -Raigarh District Raigarh, (C.G.)
(Insurer of the Offending Vehicle i.e. Bus)

---- Respondents

For Appellants	: Mr. Rishi Mahobia, Advocate
For Respondent No.1	: None
For Respondent No. 2	: Mr. Deepak Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

07/05/2019

1. This appeal has been filed by appellants/claimants under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 08/05/2014 passed by Motor Accident Claims Tribunal, Jashpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.37/2013 whereby learned Claims

Tribunal allowed claim application in part and awarded a total sum of Rs.4,04,505/- as compensation along with interest @ 9% per annum from the date of application till its realization.

2. Brief facts for disposal of this appeal are that Devnarayan was working as Cleaner with Ajay Bus Services. He was deployed as Cleaner with Bus bearing registration No.CG-14-ZA-0109 (hereinafter referred to as 'offending Bus'). In the intervening night of 14/07/2011 and 15/07/2011 when Devnarayan was sleeping in the cabin of offending Bus, at that relevant time, some unsocial activists put the offending Bus on fire at about 2.30 am in night. In the aforementioned incident, Devnarayan (Cleaner) who was sleeping in the cabin of offending Bus died due to burn injuries.
3. Claimants who are widow mother and four younger siblings have filed claim application under Section 163-A of M.V. Act before the competent Claims Tribunal for grant of compensation claiming Rs.19,25,000/- on all heads on the grounds mentioned therein.
4. Respondent No.1 who is owner of offending Bus admitted the pleadings made in claim application and employment of deceased Devnarayan as Cleaner by him. It was further pleaded that on the date of accident, offending Bus was insured with respondent No. 2/Insurance Company, therefore, the liability, if any, would be on the Insurance Company to pay the amount of compensation.
5. Respondent No.2/Insurance Company submitted its reply to claim application and denied all adverse pleadings made in claim

application. It was pleaded that claimants have failed to prove employment of deceased as Cleaner with respondent No. 1. It has been further pleaded that as there was a call "Jharkhand Band" and even then, deceased Devnarayan was sleeping in offending Bus, therefore, accident took place on account of his own negligence and Insurance Company would not be liable for payment of any amount of compensation. It was also pleaded that on the date of accident, there was violation of conditions of insurance policy as well as permit.

6. Learned Claims Tribunal on appreciation of pleadings and evidence available on record held that looking to the contents of claim application and the provisions in which, it has been filed, it is not required to look into the part of negligence of deceased, therefore, learned Claims Tribunal proceeded to assess the amount of compensation to be awarded to the claimants on account of death of deceased Devnarayan. Learned Claims Tribunal assessed the income of deceased Devnarayan as Rs.40,000/- per annum on the basis of Schedule attached to Section 163-A of the M.V. Act and after deducting $\frac{1}{3}^{\text{rd}}$ of amount from yearly income towards personal expenditure and applying multiplier of 15, awarded a sum of Rs.4,04,505/- as compensation.
7. Learned counsel appearing for appellant submitted that learned Claims Tribunal committed an error in deducting $\frac{1}{3}^{\text{rd}}$ amount towards personal expenditure whereas looking to the number of dependents, deduction should be $\frac{1}{4}^{\text{th}}$ instead of $\frac{1}{3}^{\text{rd}}$. He further

submitted that learned Claims Tribunal erred in applying the multiplier of 15 by considering the age of mother of deceased and not of deceased.

8. Per contra, learned counsel appearing for respondent No.2/Insurance Company submitted that learned Claims Tribunal has rightly assessed the amount of compensation by applying correct multiplier.
9. I have heard learned counsel appearing for parties and perused the entire record carefully.
10. So far as first contention raised by learned counsel for appellant that learned Claims Tribunal committed an error in deducting 1/3rd amount towards personal expenditure is concerned, perusal of copy of claim application would show that there are widow mother and four minor siblings of deceased and deceased being the elder son and brother of four siblings was having more responsibility to take care of his family members.
11. In view of the above facts and circumstances of the case, it will be beneficial to take help of the law laid down by Hon'ble Supreme Court in the matter **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**¹. Relevant portion of judgment reads as follows:-

“34. The Motor Vehicle Act, 1988 was amended by Act 54 of 1994, inter alia inserting Section 163-A and the Second Schedule with effect from 14.11.1994. Section 163-A of the MV Act contains

¹ (2009) 6 SCC 121

a special provision as to payment of compensation on structured formula basis, as indicated in the Second Schedule to the Act. The Second Schedule contains a Table prescribing the compensation to be awarded with reference to the age and income of the deceased. It specifies the amount of compensation to be awarded with reference to the annual income range of Rs.3,000/- to Rs.40,000/-. It does not specify the quantum of compensation in case the annual income of the deceased is more than Rs.40,000/-. But it provides the multiplier to be applied with reference to the age of the deceased. The table starts with a multiplier of 15, goes upto 18, and then steadily comes down to 5. It also provides the standard deduction as one-third on account of personal living expenses of the deceased. Therefore, where the application is under Section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs.40,000/-, by applying the formula : $(\frac{2}{3} \times AI \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under Section 163-A of the MV Act.”

12. In view of law laid down by Hon'ble Supreme Court when an application is filed under Section 163-A of M.V. Act, the compensation

is to be assessed on the basis of structured formula as provided under the Schedule appended to Section 163-A of M.V. Act. In the aforementioned judgment, Hon'ble Supreme Court has held that while calculating compensation in a case wherein application under Section 163-A of M.V. Act, the principle of tortious liability are excluded.

13. Though deceased on the date of accident was unmarried but learned Claims Tribunal looking to the number of dependents had deducted 1/3rd amount of his income towards personal expenditure. Looking to the number of claimants who are widow mother and four minor siblings and also considering the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.)** (supra), in the opinion of this Court, learned Claims Tribunal has rightly deducted 1/3rd amount of income of deceased towards his personal expenditure.
14. Next argument raised by learned counsel for appellants is that learned Claims Tribunal committed an error in applying multiplier on the basis of age of mother of deceased which is erroneous because multiplier is to be applied on the basis of age of deceased himself.
15. The issue of application of multiplier in case where deceased was a bachelor came before Hon'ble Supreme Court in the matter of **Sube Singh and Others v. Shyam Singh (dead) and Others**², wherein the Hon'ble Supreme Court held as under:-

² 2018 (3) SCJ 269

“4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of **Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Anr., (2015) 2 SCC 180** held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of **Munna Lal Jain and Anr. v. Vipin Kumar Sharma and Ors., (2015) 6 SCC 347** decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants. We may usefully refer to the exposition in paragraph Nos. 11 and 12 of the reported decision, which read thus:

“11. The remaining question is only on multiplier. The High Court following Santosh Devi (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependents or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three Judge Bench decision in Reshma Kumar (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One

reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependents is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average etc. is to be taken. To quote.....”

16. In view of the pronouncement by Hon'ble Supreme Court, the learned Claims Tribunal committed error in applying multiplier considering age of parents which is not sustainable and is hereby set aside.
17. As on the date of accident, deceased was aged about 20 years, therefore, correct multiplier applicable to the instant case will be 18 instead of 15 as applied by learned Claims Tribunal.
18. For the aforesaid reasons, amount of compensation awarded by learned Claims Tribunal requires recalculation, which this Court calculates as under:-

Considering the facts and circumstances of case, learned Claims Tribunal assessed the annual income of deceased Rs.40,000/- per annum. After deducting $\frac{1}{3}^{\text{rd}}$ towards his personal expenditure from the income of deceased i.e. Rs.13,333/- ($40,000 / 3$), annual dependency of claimants comes to Rs.26,667/- ($40,000 - 13,333$). At the time of accident, deceased was aged about 20 years, therefore, in view of ratio laid down in the matter of **Sarla Verma (Smt.)** (supra), multiplier of 18 would be applicable in the present case. After applying multiplier of 18, total loss of dependency of

claimants comes to Rs.4,80,006/- (26,667 x 18). In addition, claimants are also entitled for a sum of Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate.

19. On the basis of above calculation, award passed by learned Claims Tribunal is modified accordingly and now appellants/claimants are held entitled for a total compensation of Rs.4,89,506/- (4,80,006 + 2,000 + 5,000 + 2,500).
20. In the result, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly. Appellants/claimants are entitled for total compensation of Rs.4,89,506/- instead of Rs.4,04,505/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest @ 9% per annum from the date of filing of claim application till its realization. The other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-

(Parth Prateem Sahu)
Judge