

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 640 of 2013

- Jagmohani Bai, W/o Bhola, Cast- Cheek, aged about 36 Years, R/o Village- Paiku, Tah. And Distt. Jashpur C.G., Civil and Revenue District- Jashpur Chhattisgarh

---- Appellant

Versus

1. Manshuram S/o Rushnathram Aged About 32 Years
2. Smt. Nimanti Bai W/o Mansuram Aged About 28 Years
3. Minor Subhashram S/o Mansuram Aged About 13 Years
4. Minor Rajendraram S/o Mansuram Aged About 11 Years

Respondents- 3 & 4 are minors through their father and natural guardian Mansuram.

All by Caste – Cheek, r/o Village Sakardih, Post- Ghagra, Tah. Manora, District : Jashpur, Chhattisgarh (Claimants)

5. Rajkumar Ram Chauhan S/o Dhiran @ Babulal Chauhan Aged About 20 Years R/o Jashpur, Tanki Toli, P.S. And Tah. Jashpur, Chhattisgarh (Driver of offending vehicle Tractor No.CG 14A/1318 and Trolley No.CG14A-1319)
6. Ramsayram S/o Chamarsay Aged About 50 Years Caste- Nagvanshi, R/o village Batikela, P.S. And Tah. Kansabel, District : Jashpur, Chhattisgarh (Owner of offending vehicle Tractor No.CG 14A/1318 and Trolley No.CG14A-1319)
7. Branch Manager, The New India Insu.Co.Ltd., Branch Office- Satigudi Chowk, Raigarh, District : Raigarh, Chhattisgarh (Insurer)

---- Respondents

For Appellant	: Shri Aditya chopra, Advocate on behalf of Shri AK Prasad, Advocate
For Respondents-1 to 4	: Shri Shrikant Kaushik, Advocate on behalf of Shri Sanjay Agrawal, Advocate
For Respondent- 7	: Shri Raj Awasthi, Advocate
For other Respondents	: None appears

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

12.04.2019

1. Appellant/ Non-applicant 4 who is natural mother of deceased- Preet Chauhan has challenged impugned award dated 30.03.2013 passed by

learned Additional Motor Accident Claims Tribunal, Jashpur in Claim Case No.10 of 2012 whereby learned Claims Tribunal awarded a sum of Rs.35,000/- out of total compensation Rs.1,90,000/- to appellant.

2. Brief facts for disposal of this appeal are that deceased was son of Mansuram and present appellant- Jagmohani Bai. On 02.06.2008 at about 7.30 pm when deceased was returning along with his father on tractor-trolley bearing Nos. CG14A/1318 & CG14A/1319 (offending vehicle). Due to rash and negligent driving of respondent- 5, offending vehicle fell down from Manjha bridge and in the said accident, Preet Chauhan died as he came under the tractor. Respondents- 1 to 4/ claimants filed claim application claiming Rs.15,50,000/- as compensation against death of son of respondent- 1 and appellant.

3. Respondents- 5 and 6 who are driver and owner of offending vehicle submitted reply to the claim application and stated that they were falsely implicated in the case. Respondent- 2 was not natural mother and respondents- 3 and 4 are not own brothers of deceased. It has also been pleaded that on the date of accident, offending vehicle was insured with respondent- 7/ Insurance Company.

4. Insurance Company also submitted reply to the claim application and pleaded that offending vehicle was insured for agricultural purposes but on the date of accident it was being used for commercial purpose. Deceased was travelling as passenger on the tractor and death of deceased took place due to his own negligence. There is violation of

conditions of Insurance Policy therefore, Insurance Company is not liable for payment of any compensation.

5. Appellant submitted reply and stated that she was married with respondent- 1 Manshuran and deceased was son out of their wedlock. She performed last rite ceremony of her deceased son and she took care and maintained the deceased on her own therefore, she further prayed that entire amount of compensation be paid only to her.

6. Learned Claims Tribunal while appreciating pleadings and evidences led by the parties, awarded a total sum of Rs.1,90,000/- out of which appellant was held to be entitled for Rs.35,000/-; from balance amount of compensation, Rs.15,000/- each to be given to respondents- 3 and 4 and rest of amount was awarded to respondent- 1, father of deceased.

7. Learned counsel for the appellant argued that learned Claims Tribunal committed error in assessing income of deceased on notional basis ie as Rs.36,000/- per annum, and in application of multiplier of 10 ignoring age of deceased on the date of accident. It has also been argued that learned Claims Tribunal not awarded any amount towards future prospects and further very meagre amount has been awarded on other conventional heads. It has also been argued that natural guardians ie appellant and respondent- 1 being mother and father of deceased, they will be entitled for equal share out of amount of award and other respondents- 2 to 4 will not be entitled for any amount of compensation as they are not having any natural relationship with the deceased.

8. Per contra learned counsel appearing for respondents- 1 to 4 argued that cross-appeal was filed for enhancement of award and also submitted that distribution of compensation made by learned Claims Tribunal is just and proper as on the date of accident deceased being son of respondent- 1 was residing with respondents- 1 to 4 and it is respondent- 1, who maintained and brought up deceased and also performed last rites ceremony of deceased.

9. I have heard learned counsel for the parties and perused the record. Accident took place on 02.06.2008, therefore, learned Claims Tribunal rightly assessed income of deceased as Rs 36,000/- per annum on notional basis as deceased was aged about 17 years and doing work of labour on the date of accident. Learned Claims Tribunal has not awarded any amount towards future prospects which was required to be awarded looking to the age of deceased. Learned Claims Tribunal also committed an error by applying multiplier of 10 taking into consideration age of parents, whereas, multiplier is to be applied on the basis of age of deceased and not on the basis of age of dependants.

10. In the matter of **Sube Singh and another Vs Shyam Singh (dead) and others** reported in 2018 (3) SCC 18 the issue with regard to application of multiplier in case of bachelor has been discussed by Hon'ble Supreme Court and observed as under:

“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 Vs Ramkaran Ramchandra Sharma**¹ 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 Vs Vipin Kumar Sharma**² 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 Vs National Insurance Company Limited**³, has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants 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 Kumari Vs Madan Mohan**⁴. 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 dependants 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 : (Reshma Kumari (*supra*) para 36)

“36. In **Sarla Verma Vs DTC**⁵ this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under

¹ (2015) 2 SCC 180

² (2015) 6 SCC 347

³ (2012) 6 SCC 421

⁴ (2013) 9 SCC 65

⁵ (2009) 6 SCC 121

Section 166. It has been rightly stated in *Sarla Verma (supra)* that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma (supra)*.”

12. In *Sarla Verma (supra)*, at paragraph-19 a two-Judge Bench dealt with this aspect in Step 2. To quote (SCC p133):

“19.xxxx xxxxxx xxxx Step 2
(ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with

reference to the age of the deceased.”

5. Considering the aforementioned principle expounded in Sarla Verma (supra), which has been affirmed by the Constitution Bench of this Court in **National Insurance Company Ltd. Vs Pranay Sethi and Ors**⁶, the appellants are justified in insisting for applying multiplier 18.

11. Hon'ble Supreme Court in categorical terms has held that in claim case against death of a bachelor consideration of age for application of multiplier would be age of deceased and not the age of his/her parents.

12. As appellant and respondent- 1 are natural parents of deceased and from their wedlock deceased was the only child and therefore, in the opinion of this Court both of them are entitled for equal share of amount of compensation.

13. In view of above, the award passed by learned Claims Tribunal requires re-consideration and re-calculation.

14. Income of deceased is taken as Rs.36,000/- per annum and by adding 40% of his income, yearly income of deceased would come to Rs.50,400/- {36000 + (36,000 x 40/100)}. Deceased was bachelor therefore, half of his yearly income is required to be deducted for his personal expenses. After deduction of half of his income towards personal expenses, claimants' yearly dependency would come to Rs.25,200/- (50400/2). As per records and finding recorded by learned Claims Tribunal, deceased was aged about 17 years, hence, multiplier of 18 would be applicable which makes the total amount of compensation as

⁶ (2017) 16 SCC 680

Rs.4,53,600/-. Apart from this amount, appellant as well as respondent- 1 are also entitled for an amount of Rs.30,000/- towards other conventional heads. By adding Rs.30,000/- to loss of dependency, total amount of compensation comes to Rs.4,83,600/-.

15. As held in preceding paragraphs, appellant as well as respondent- 1 are entitled for equal share in total amount of compensation. Appellant-mother of deceased is entitled for Rs.2,41,800/- ($483600/2$) whereas Respondent- 1, father of deceased is entitled for Rs.2,41,800/- and out of this amount, Rs.50,000/- for each to be kept in fixed deposit of a nationalised Bank for a period of two years in the name of appellant as well as respondent- 1 separately. Further amount of Rs.50,000/- for each to be kept in fixed deposit in the name of appellant as well as respondent- 1 for a period of four years separately and rest of the amount should be paid to appellant and respondent- 1 of their share through account payee cheque.

16. The amount of award will carry 6% interest from the date of filing application till its realisation. Respondent- 7 /Insurance Company will deposit the amount of compensation within a period of 3 months from the date of award.

17. Appeal is partly allowed and the impugned award is modified accordingly.

18. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE