

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 512 of 2013

1. Smt. Kaushaliya Bai W/o Late Lakhanlal, Aged About 38 Years Village Thakurtola, Tahsil & District Durg (C.G.) Civil and Revenue Dist. Durg.
2. Smt. Suruj Bai W/o Rajkamal, Aged About 30 Years, Village Devyurjhal, Tahsil & District Durg (C.G.) Civil and Revenue Dist. Durg.
3. Smt. Gayatri Bai W/o Rajkumar Aged About 25 Years Village Mohrenga, Berla, Present R/o Telibandha, Raipur, Tahsil & District Raipur (C.G.) Civil and Revenue Dist. Raipur.
4. Smt. Gautam Bai W/o Ramesh Kumar, Aged About 22 Years Village Telibandha, Raipur, Tahsil & District Raipur C.G. Civil and Revenue Dist. Raipur.

---- Appellants

Versus

Puran Prasad S/o Mulchand Lahre, Aged About 56 Years Village – Qt.No. 239 C, Risali Sector Bhilai, District Durg, Permanent Address Thanaud, Out Post Anjora, Police Station Pulgaon, District Durg (C.G.).

---- Respondent

For Appellants	: Mr. S.S. Paikra, Advocate on behalf of Mr. A.K. Prasad, Advocate
For Respondent	: None

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

10/05/2019

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 31/01/2013 passed by First Additional Claims Tribunal, Durg

District Durg (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.42/2012 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.50,000/- only as compensation to the claimants in a death case.

2. Brief facts for disposal of this appeal are that on 12/01/2012 Smt. Devkibai along with her daughter Gayatri and her maternal granddaughter Pratiksha were going to village Deurjhal from Utai as pedestrian's, on the way, near Aganbadi Centre of Dumardeeh. At about 5.00 pm, respondent who was driving Maruti Car bearing registration No.CG04-ZD-1428 (hereinafter referred to as offending car'), dashed Devkibai, due to which, she sustained injuries on her person. She was immediately taken to hospital, but on the way, she succumbed to those injuries. Matter was reported to concerned Police Station based upon which Crime bearing No.09/2012 for commission of offence under Sections 279, 337, 304-A of IPC was registered against respondent.
3. On account of death of Devkibai, appellants/claimants who are daughters of deceased filed claim application under Section 166 of M.V. Act before Claims Tribunal claiming Rs.8,00,000/- against the respondent mentioning therein that on the date of accident, deceased was aged about 55 years and earning Rs.4,500/- per month.
4. Respondent submitted reply to claim application and denied the fact that due to his rash and negligent act, accident took place, in which, Devkibai died. It has been pleaded that on the date of accident,

deceased was aged about 65 years and was not having any source of income, appellants/claimants were not residing with deceased, therefore, they were not dependant on the deceased and prayed for dismissal of claim application.

5. Learned Claims Tribunal on appreciation of pleadings and evidence led by respective parties held that accident took place on account of rash and negligent driving of respondent by offending car, due to which, Devkibai died. It was further held that all the claimants are major married daughters residing in their in-laws' house. Though Gayatri stated in her evidence that she was residing with deceased, but learned Claims Tribunal has not found Gayatri to be dependant on the deceased being a married lady, awarded a total sum of Rs.50,000/- only as loss of estate.
6. Learned counsel appearing for appellants submitted that appellants/claimants are legal heirs/legal representatives of deceased. Gayatri has specifically pleaded and given statement before learned Claims Tribunal that on the date of accident, she was residing with deceased and deceased was doing the work of Labour. He further submitted that deceased used to give savings of her earnings to all her daughters, therefore, learned Claims Tribunal ought to have calculated compensation on the basis of multiplier as provided under the law for calculating the compensation.
7. I have heard learned counsel appearing for appellants and perused entire record carefully.

8. The application for grant of compensation arising out of an accident lies under Section 166 of M.V. Act., which reads thus :-

166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on

business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

3[***]

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]”

9. Section 166(c) of M.V. Act provides that the claim application can be filed by all or any of legal representatives of deceased. It nowhere makes exclusion of married daughters, major daughters or major sons from filing the application for grant of compensation.
10. In the case at hand, all claimants are married daughters of deceased and thereby they very well come under the purview of Section 166(c) of M.V. Act. The Legislature has not created any distinction between persons who are major, minor, fully dependant or partly dependant on the deceased, it only speaks about legal representatives of deceased are entitled to file an application for compensation.
11. In view of above, specific unambiguous and clear language used in Section 166 of M.V. Act, it cannot be said that major son/daughter,

married son/married daughter cannot claim compensation on account of accidental death caused by any of Motor Vehicle.

- 12.** In the case at hand, appellants/claimants have very specifically pleaded that all of them are daughters and only Gayatri was residing with deceased at Raipur at the time of accident, therefore, they are entitled for compensation on the basis of earning/income to be assessed in the facts and circumstances of the present case.
- 13.** Now the question arises that whether claimant No. 1 can be said to be dependant upon her mother who was residing with her. Parents residing with their children in normal course extend their help in family affairs, household work, taking care of children in absence of parent, cooking and serving food to family members etc. The deceased being an elder lady in family residing with appellant No. 1 might be doing the part of aforementioned work. The pains which elder member of the family takes for, upbringing and caring of small children, maintaining and managing affairs of all kind in house cannot be actually valued in terms of money.
- 14.** In the case at hand, there is no rebuttal evidence produced by the respondent to negate the statement of appellant No.1 that deceased was not residing in the company of appellant No.1. In these circumstances and facts even if the claimants failed to prove the income of deceased by documentary evidence, then the effort of the elder lady of home in performing aforementioned acts cannot be

ignored but her effort and work towards family should also be taken into consideration for calculating amount of compensation.

15. In view of discussion in preceding paragraphs, income of deceased can be assessed as Rs.3,000/- per month i.e. Rs.36,000/- per annum as there is no specific proof of income of deceased. As on the date of accident, deceased was aged about 55 years as per Exhibit P-8 i.e. postmortem report, 50% amount towards personal and living expenses should be deducted as deceased was not survived by the spouse, but the major and married daughters.
16. The provisions of M.V. Act provides manner of calculation of amount of compensation by adopting multiplier based on the age of deceased. Calculation of multiplier looking to the age and status of deceased has also been decided and guidelines in this regard have been laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**¹.
17. Apart from the above amount of dependency, claimants are also entitled for the addition of amount towards future prospects as per the law laid down by Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi**². The deceased was aged about 55 years on date of accident and not in permanent employment therefore, claimants will be entitled for addition of 10%

1 (2009) 6 SCC 121

2 (2017) 16 SCC 680

of the assessed monthly income towards future prospects for calculating her total monthly income.

- 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, I hold income of deceased on the date of accident to be Rs.3,000/- per month i.e. Rs.36,000/- per annum. By adding 10% of the aforesaid income towards future prospects ($36,000 \times 10\% = 3,600$), yearly income of deceased comes to Rs.39,600/- ($36,000 + 3,600$). After deducting 50% towards her personal and living expenses from the income of deceased i.e. Rs.19,800/- ($39,600 \times 50\%$), annual dependency of claimants comes to Rs.19,800/- ($39,600 - 19,800$). At the time of accident, deceased was aged about 55 years, therefore, in view of ratio laid down in the matter of Sarla Verma (Smt.) (Supra), multiplier of 11 would be applicable in the present case. After applying multiplier of 11, total loss of dependency of claimants comes to Rs.2,17,800/- ($19,800 \times 11$). Now appellants/claimants are held entitled for a total compensation of Rs.2,17,800/-. Apart from the above amount, claimants are also entitled for Rs.30,000/- towards other conventional heads, which make the amount of compensation as Rs.2,47,800/-.

- 19.** For the foregoing reasons, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly.

Appellants/claimants are entitled for total compensation of Rs.2,47,800/- instead of Rs.50,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% 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

Yogesh