NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 173 of 2014

1. Smt.Shanti Bai, W/o Laxman Netam Aged About 40 Years
2. Laxman S/o Sonuram Netam Aged About 45 Years
3. Satyanarayan S/o Laxman Netam Aged About 16 Years

All are R/o Kaskonga, out post- Kundai, P.S. Raighar, Distt. Navrangpur Orissa

---- Appellants

Versus

1. Laxmikant Mandal, S/o Ishwar Arjun Mandal Aged About 55 Years R/o Santoshi Nagar, Umarkot, P.S. Umarkot, Distt. Navrangpur Orissa, Orissa
2. Anil Agrawal S/o Ramprasad Agrawal R/o Village And Post- Ward No. 01, Umarkot, P.S. Umarkot, Distt. Navrangpur Orissa
3. Chola Mandlam M.S. General Insu.Co.Ltd. S/o Thru- Branch Manager, Branch Office Hinduja Complex, Parasnagar Chowk, Nearby Railway Line Devendra Nagar, Raipur, Tah. And Distt. Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Anil Gulati, Advocate
For Respondents-1 & 2	:	None appears
For Respondent- 3	:	Shri Amit Buxy, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

03.05.2019

1. Appellants/claimants have filed this appeal challenging the impugned award dated 12.07.2013 passed in Claim Case No. 172 of 2012 by Motor Accident Claims Tribunal, North Bastar Kanker (for short, 'Claims Tribunal'), whereby learned Claims Tribunal partly allowed the claim application and awarded a sum of Rs.2,87,000/- along with interest @ 6% per annum from the date of filing of claim application.

Brief facts for disposal of this appeal are that on 27.09.2011 at about 3.30 am Satturam was travelling on a truck bearing No.OR24-0325 (for short, 'offending vehicle') as a cleaner and going towards Raipur from Kanker. When offending vehicle reached at Telgara bridge near Charama, it dashed another truck which was standing on side of road from its back. In the aforementioned accident, Satturam suffered grievous injuries over his face, head, right shoulder and succumbed to those injuries on the spot. The matter was reported to concerned Police Station and Crime Case has been registered against respondent- 1, driver of offending vehicle under Section 304 A IPC.

2. Claimants who are parents and brother of deceased filed claim application mentioning therein that the accident took place due to rash and negligent driving of respondent- 1. On the date of accident deceased was earning salary of Rs.4,500/- per month with daily allowance of Rs.50/- therefore, they claimed Rs.22,50,000/- as compensation on all heads.

3. Respondents- 1 and 2, driver and owner of offending vehicle respectively submitted their reply to claim application and denied all adverse pleadings in claim application. Further they pleaded that claim application was on conjectures and surmises. It was also pleaded that on the date of accident offending vehicle was insured with respondent- 3 / Insurance Company.

4. Respondent- 3/ Insurance Company submitted its reply to claim application and pleaded that as there was accident between two vehicles but the owner, driver and Insurance Company of other vehicle ie stationary truck are not arrayed as respondents/non-applicants therein the claim

application therefore, claim application is not maintainable. Driver of offending vehicle was not possessing valid and effective driving license and the vehicle was being used without permit and fitness certificate. Therefore, there is violation of conditions of Insurance Policy.

5. Learned Claims Tribunal made six issues for consideration based on pleadings and evidence available on record and held that there is no violation of conditions of Insurance Policy, accident took place on account of rash and negligent driving of respondent- 1, ie driver of offending vehicle and owner, driver and Insurance Company of other vehicle are not necessary party.

6. Learned Claims Tribunal after appreciation of evidence on record awarded a total sum of Rs.2,87,000/- as compensation and fastened liability for payment of compensation on Insurance Company, ie respondent- 3.

7. Learned counsel for appellant submitted that learned Claims Tribunal erred in awarding very less amount of compensation and in assessing income of deceased on lower side. Learned Tribunal also erred in applying multiplier of 14, though age of deceased was 18 years on the date of accident and in not granting any amount towards future prospects. It was further submitted that learned Claims Tribunal committed error in awarding very meagre amount towards other conventional heads.

8. Learned counsel for respondent- Insurance Company while supporting the impugned award stated that as there is no proof of income of deceased, learned Claims Tribunal had rightly assessed income of

deceased on notional basis. He further argued that learned Claims Tribunal justly applied multiplier considering age of parents of deceased, as the deceased was bachelor on the date of accident.

9. I have heard learned counsel for the parties and perused records. Claimants examined Dinesh Kawasi as AW-2 who in his evidence specifically stated that on the date of accident he was working as helper/cleaner in stationary truck bearing No.CG18H-0988 and offending vehicle dashed with this stationary truck from its back. He also stated that FIR was lodged by Budhram, who is driver of stationary truck. The final report submitted by concerned Police Station with respect to FIR (Ex.P/1) where description of accident has been mentioned that offending vehicle dashed the stationary truck from its back and also that deceased-Satturam checker/cleaner travelling in offending vehicle succumbed to grievous injuries sustained by him. From the undisputed fact that truck was of Orissa State and deceased- Satturam died while travelling on offending truck and he was resident of Orissa. From the aforementioned facts and pleading made in the claim application that deceased- Satturam was working as cleaner in the offending vehicle does not appear to be false and fabricated pleading. Respondents- 1 and 2 though filed reply to claim application, but they had not made any specific pleading as to how Satturam was travelling in truck.

10. In view of above, in the opinion of this Court, learned Claims Tribunal has not committed any error in holding that deceased- Satturam was travelling as cleaner on the offending vehicle. Engagement as cleaner by deceased is not an appointment in Government agency or firm.

Driver and owner of offending vehicle have not made any specific pleading with respect to status of deceased while travelling in truck. It can be safely presumed with pleading made by claimants, who are parents of deceased that their son was engaged as cleaner in offending truck.

11. Learned Claims Tribunal placed reliance in decision of **Smt Sagarbai Nirmalkar and others Vs Janaklal Pandey and others** reported in CGLJ 2009 (3) 51 which appears to be an accident by prior to the date of its reporting., wherein this Court took notional income of deceased as Rs.3,000/- because the income is not proved by documentary evidence. In the case at hand deceased was employed /engaged as cleaner in offending truck and the accident is of September 2011. Considering the aforementioned factual matrix and date of accident on which deceased was working as cleaner, in the opinion of this Court learned Claims Tribunal committed error in assessing income of deceased as Rs.3,000/- per month only.

12. In the considered opinion of this Court where it is *prima facie* evident from facts and circumstances of the case that appellant was engaged as cleaner in offending truck, income of deceased can very well be taken as Rs.3,500/- per month.

13. In view of above finding recorded by learned Claims Tribunal with respect to assessing income of deceased as Rs.3,000/- per month is set aside and income of deceased is assessed as Rs.4,000/- per month.

14. Learned Claims Tribunal applied multiplier of 14 on the basis of age of parents of deceased as deceased was a bachelor on the date of

accident. Application of multiplier in case of deceased being bachelor was discussed in the matter of **Sube Singh and another Vs Shyam Singh (dead) and others** reported in 2018 (3) SCC 18 in which Hon'ble Supreme Court 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:
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>> "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

[1] (2015) 2 SCC 180
[2] (2015) 6 SCC 347
[3] (2012) 6 SCC 421
[4] (2013) 9 SCC 65

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 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)
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> 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

[5] (2009) 6 SCC 121

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."

15. It is categorically laid down law that in death case of a bachelor consideration of age for application of multiplier would be age of deceased and not the age of his dependants.

16. In view of law laid down by Hon'ble Supreme Court it is even in the case of death of a bachelor, multiplier should be applied taking into consideration age of deceased and not his dependants' age. In present case, deceased was 18 years of age on the date of accident and therefore, multiplier of 18 would be applicable. Therefore, finding recorded by learned Claims Tribunal with respect to application of multiplier of 14 is also hereby set aside.

17. In the above facts and circumstances, amount of compensation awarded by learned Claims Tribunal requires reconsideration and recalculation.

18. Income of deceased on the date of accident has been taken as Rs.4,000/- per month, deceased being aged about 18 years, 40% of his assessed income to be added towards future prospects. By adding 40% to assessed income, his monthly income would come to Rs.5,600/- {4000 + (4000 x 40/100)}. On the date of accident, deceased was bachelor.

[6] (2017) 16 SCC 680

Therefore, 50% should be deducted towards personal expenses of deceased. Now claimants' dependency would come to Rs.2,800/- (5600/2) per month and Rs.33,600/- (2800 x 12) per annum. By applying multiplier of 18, total loss of dependency comes to Rs.6,04,800/- (33600 x 18). Apart from aforesaid amount, claimants will also be entitled for an amount of Rs.30,000/- towards other conventional heads which makes total compensation as Rs.6,34,800/-.

19. Now appellants/claimants are entitled for a total sum of Rs.6,34,800/- (Rupees six lakh thirty four thousand eight hundred) instead of 2,87,000/- as awarded by learned Claims Tribunal. Liability of payment of compensation would be on the Insurance Company / respondent- 3.

20. The amount of award will carry interest @ 6% per annum from the date of filing of claim application. Other conditions mentioned by learned Claims Tribunal will remain intact.

21. Appeal is partly allowed in aforementioned terms and the impugned award is modified to the extent as indicated above.

22. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma