NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.1035 of 2014

1. Akti Ram S/o Shri Tukru Ram, Aged About 48 Years, Caste- Yadav.
2. Rukmani Yadav W/o Shri Akti Ram Yadav Aged About 44 Years.
   Both are R/o. Village- Sapia, Tah. Malkharouda, Distt. Janjgir-Champa C.G.

---- Appellants

Versus

1. Shivmani Yadav S/o Sudama Yadav Aged About 35 Years, Occupation- Vehicle Driver, R/o Raigarh Road, Kharsia, Tah. Kharsia, Distt. Raigarh C.G.
2. Sunil Sharma S/o Mahaveer Sharma Aged About 32 Years, Occupation- Owner of the Vehicle, R/o Dabhra Road, Kharsia, Distt. Raigarh C.G.
3. Shri Ram General Insu. Co. Ltd. E-8, EPIP RICO, Seetapura, Jaipur, Rajasthan-302 022 (India).

---- Respondents

For Appellants	:	Shri Abhishek Saraf, Advocate.
For Respondents No.1 & 2	:	Shri Vijay Kumar Sahu, Advocate.
For Respondent No.3.	:	Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

17.09.2019

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the impugned award dated 14.08.2014 passed by learned Motor Accident Claims Tribunal, Raigarh, C.G (in short 'the Tribunal') in Claim Case No.16/2013, whereby the Tribunal allowed claim application in part, awarded total sum of Rs.2,42,000/- as compensation in a death case along with interest @ 6% p.a. and fastened liability upon non-applicants therein to pay the amount of compensation.

2. Brief facts necessary for disposal of this appeal are that on 24.01.2013 deceased -Sadhram Yadav was going on his bicycle towards Raigarh Chowk College and when he reached near Raigarh Chowk, one Truck Bearing registration No. CG/13/D/1884 (for short 'offending vehicle'),

driven by non-applicant no.1- Shivmani Yadav, dashed his motorcycle, as a result said - Sadhram Yadav suffered grievous injuries over his person and succumbed to those injuries on spot. Incident was reported to concerned police station based on which criminal case was registered against driver of offending vehicle.

3. Claimants, who are parents of deceased, have filed a claim application under Section 166 of the Act of 1988 before the competent Claims Tribunal claiming Rs.44,26,000/- as compensation on the grounds mentioned therein.

4. Non-applicant Nos.1 & 2/respondent Nos.1 & 2 -herein (driver & owner of offending vehicle) submitted reply to claim application and denied all adverse averments made therein including fact of accident from offending vehicle. They pleaded that on the date of accident, deceased himself was riding his bicycle in middle of road, therefore, he himself was responsible for the accident. It was further pleaded that while engaging non-applicant no.1 as driver, owner of offending vehicle has not only perused his driving license but also satisfied himself by taking his driving test. Lastly it was pleaded that as on the date of accident, offending vehicle was insured with respondent no.3/insurance company, therefore, liability, if any, would be on insurance company.

5. Non -applicant No.3/Insurance Company submitted its reply to claim application wherein it not admitted the fact that offending vehicle was insured with it till investigation and also accidental death of deceased Sadhram Yadav. It was pleaded that on the date of accident deceased was unemployed and amount of compensation claimed is on higher side.

It was further pleaded that there was violation of conditions of the insurance policy as on the date of accident driver of offending vehicle was not having valid and effective driving license and there was no valid permit and fitness certificate, therefore, claimants are not entitled for any amount of compensation from it.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that accident took-place due to rash and negligent driving of driver of offending vehicle and that deceased Sadhram Yadav succumbed to injuries caused by offending vehicle. Further, the Tribunal by taking income of deceased as Rs.3,000/- per month and applying multiplier of 10, has awarded a total sum of Rs.2,42,000/- as compensation to claimants along with interest @ 6% p.a.

7. Learned counsel appearing for appellants submits that the Tribunal committed an error in holding income of deceased as Rs.3,000/- per month by ignoring oral evidence of AW-1 Akti Ram Yadav (father of deceased) available on record, where it has been specifically mentioned that on the date of accident, deceased Sadhram Yadav was pursuing studies of Bachelor of Arts and also doing part-time work of computer repairing, computer typing, photocopy and photography thereby earning Rs.10,000 /- per month. He further submits that the Tribunal also erred in not awarding any amount towards future prospects ignoring the fact that on the date of accident deceased was aged about 22 years only. He also submits that the Tribunal further erred in applying multiplier of 10 considering the age of parents of deceased. Amount awarded towards other conventional heads is also on lower side. On the basis of above,

he submits that findings recorded by the Tribunal be set aside and the amount of compensation awarded be suitably enhanced.

8. Per contra, learned counsel for respondent No.3/Insurance Company supported the impugned award and submitted that in absence of specific evidence with regard to income of deceased the Tribunal has rightly assessed monthly income of deceased at Rs.3,000/- on notional basis, which cannot be said to be on lower side. He further submits that the Tribunal erred in deducting one-third towards personal and living expenses of deceased ignoring this fact that on the date of accident deceased was unmarried and, therefore, appropriate deduction would be 1/2 instead of one-third. He also submits that the Tribunal has awarded suitable amount of compensation on other heads and as the amount of compensation awarded to claimants is just and proper, therefore, it does not call for any interference.

9. I have heard learned counsel for the parties and perused the records.

10. Claimants in support of their pleadings has placed on record Ex. P/14 to P/18 ie marksheets, class 12^{th}, marksheet of B.A Part- 1 & one year computer training certificate etc, which was taken by deceased much prior to the date of incident. Claimants have also produced the documents of criminal case to prove the accidental death of their son and the Tribunal also arrived at a finding that accident took place from the offending vehicle, deceased- Sadhram Yadav died due to accidental injuries. Said finding is not disputed by the Insurance company.

11. So far as ground raised by learned counsel for appellants/claimants with respect to assessment of monthly income of deceased as Rs.10,000/-

per month is concerned, claimants have examined Akti Ram Yadav (father of deceased) as AW-1 who specifically stated in his evidence that his son Sadhram Yadav was not only pursuing higher studies but also doing part-time work of computer repairing, computer typing, photocopy and photography and thereby earning Rs.10,000/- per month. However, claimants failed to produce any documentary evidence on record to prove income of deceased as pleaded by them. In these circumstances, it will be proper to assess monthly income of deceased on notional basis. Looking to nature of work of deceased, as pleaded before the Tribunal, and considering the wage rate prevailing in Distt. Janjgir-Champa at the time of accident, income of deceased can be assessed at Rs.4,000/- per month on notional basis.

12. Next ground raised by learned counsel for appellants/claimants is that Tribunal committed error in not awarding any amount towards future prospects. Issue with respect of award of future prospects has been dealt with and decided in the matter of **National Insurance Co. Ltd. v. Pranay Sethi reported in (2017) 16 SCC 680** wherein Hon'ble Supreme Court has held that in case the deceased was below the age of 40 years and not in permanent employment, an addition of 40% of actual income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> "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."

13. Indisputably, in case at hand, on the date of accident, deceased was aged about 22 years, which is less than 40 year, therefore, in view of above judgment, this Court is of the considered opinion that appellants/claimants are entitled for an addition of 40% of established income of deceased.

14. Learned Claims Tribunal has applied multiplier of 10 considering age of parents of deceased, which is not sustainable. Issue of application of multiplier in case where the deceased was a bachelor came up before Hon'ble Supreme Court in the matter of **Sube Singh v. Shyam Singh** reported in **(2018) 3 SCC 18** and it was held 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 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 dependents."

15. In view of above law laid down by Hon'ble Supreme Court, multiplier is to be applied on the basis of age of deceased not on the basis of parents of the deceased at the time of accident. Hence, the Tribunal has committed an error in applying multiplier on the basis of age of parents of deceased. In the case in hand, on the date of accident deceased was aged 22 years, therefore, appropriate multiplier would be 18.

16. Learned counsel appearing for insurance company raised a ground that the Tribunal committed an error in deducting one-third towards personal and living expense of deceased. Though, 50% is to be deducted towards personal and living expenses of unmarried persons, but where dependents or the numbers of family are more than two in that cases, deduction towards personal expenditure can varry.

17. In case at hand, on the date of accident, deceased was unmarried and claimants are also two in number, therefore, deduction of one-third towards personal and living expense made by the Tribunal is not sustainable, which is liable to be set aside and is hereby set aside. Deduction towards personal and living expenses in the facts and circumstance of this case will be 1/2.

18. In view of the aforementioned discussion, impugned award passed by the Tribunal requires re-assessment and recalculation, which this Court proposes as follows:

19. Income of deceased is taken as Rs.4,000/- per month and by adding 40% of the income towards future prospects in view of the guidelines issued by the Hon'ble Supreme Court in the matter of Pranay Sethi (supra), monthly income of deceased would come to Rs.5,600/- (4000+1600) and yearly income would be Rs.67,200/- (5600X12). On

deducting 1/2 towards personal and living expenses, yearly dependency would be Rs.33,600/- (67,200 - 33,600). On the date of accident, deceased was aged about 22 years and therefore, multiplier of 18 would be applicable (33,600X18). By applying multiplier of 18, loss of dependency would come to Rs.6,04,800/-. As deceased was unmarried person, therefore, claimants would also be entitled for a sum of Rs.30,000/- for other conventional heads.

20. In view of above, now claimants will be entitled for total sum of Rs.6,34,800/- instead of Rs.2,42,000/- as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of filing of application till its realization.

21. In the result, appeal is allowed in part and impugned award stands modified to the extent as indicated herein-above. Other condition imposed by the Tribunal will remain intact.

Sd/-

(Parth Prateem Sahu)
Judge

Jamal