NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 1042 of 2013

1. Smt. Dayawati, Wd/o Late Virendra Yadav, aged about 30 Years
2. Kuldeep S/o Late Virendra Yadav, aged about 2 Years
3. Smt. Susheela Yadav W/o Shiv Kumar, aged about 56 Years
   Appellant No.2 (Kuldeep) Minor, through their natural guardian mother Smt. Dayawati, Wd/o Late Virendra Yadav.

All are R/o village Demar, Tahsil & District Dhamtari, Civil & Revenue District Dhamtari, Chhattisgarh.

---- Appellants

Versus

1. Ramesh Kumar S/o J.L. Sinha, aged about 28 Years, R/o Village Telinsatti, Tahsil Dhamtari, Civil & Revenue District Dhamtari, Chhattisgarh.
   (Driver of the vehicle)
2. Vikash Kumar Raheja S/o Sadhuram Raheja, R/o Mrathapara, Dhamtari, Tahsil & District Dhamtari, Chhattisgarh.
   (Owner of the vehicle)
3. Branch Manager, the Oriental Insurance Company Limited, Balak Chowk, Dhamtari, Tahsil & District Dhamtari, Chhattisgarh.
   (Insurer)

---- Respondents

For Appellants	: Mr. Kunal Das, Advocate
For Respondents No.1	: None
For Respondent No.2	: Mr. Anurup Panda, Advocate on behalf of Mr. B.D. Guru, Advocate
For Respondent No.3	: Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

17/09/2019

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 10/07/2013 passed by Chief Motor Accident Claims Tribunal, Dhamtari, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.169/2012, whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.3,73,000/- as compensation in a death case.

2. Brief facts relevant for disposal of this appeal, are that, on 09/10/2012 at about 5.00 PM, Virendra Yadav was walking towards Danteshwari Petrol Pump to serve tea on his left side of road, at that relevant time, one Truck bearing registration No. CG-05/D/1170 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 dashed Virendra Yadav. In the aforementioned accident, Virendra Yadav suffered grievous injuries over his person and he succumbed to those injuries on same day.

3. The matter was reported to the concerned Police Station, based on which, Crime No.221/2012 was registered against non-applicant No.1 i.e. driver of offending vehicle for the offence punishable under Sections 279, 337 and 304-A of IPC.

4. Appellants/claimants who are widow, children and mother of deceased filed claim application under Section 166 of the M.V. Act before the Claims Tribunal claiming Rs.31,50,000/- as compensation on account of untimely death of Virendra Yadav.

5. Non-applicants No.1 and 2 i.e. driver and owner of offending vehicle submitted reply to claim application and pleaded that accident took place on account of negligence of late Virendra Yadav, he was under the influence of liquor and the accident did not take place from their vehicle. They further pleaded that on the date of accident, non-applicant No.1/driver of offending vehicle was possessing valid and effective driving licence and offending vehicle was insured with non-applicant No.3, therefore, they are not liable for payment of any amount of compensation.

6. Non-applicant No.3/Insurance Company also submitted reply to claim application and pleaded that the accident took place as deceased himself was negligent and walking on wrong side. It was also pleaded that non-applicant No.1 was not possessing valid and effective driving licence and there was violation of conditions of insurance policy, therefore, the Insurance Company is not liable to pay any amount of compensation.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties held that the accident took place due to rash and negligent driving of non-applicant No.1 i.e. driver of offending vehicle; Virendra Yadav died on account of accidental injuries suffered by him and awarded a total sum of Rs.3,73,000/- as compensation to the claimants and fastened liability upon the non-applicants i.e. driver, owner and insurer of the offending vehicle jointly and severally to pay the compensation.

8. Learned counsel for the appellant/claimants submitted that learned Claims Tribunal committed error in assessing the income of deceased as Rs.3,000/- per month by ignoring the fact that on the date of accident, the deceased was running a business of Tea shop. He further submitted that learned Claims Tribunal committed error in applying the multiplier of 15 only, in not awarding any amount towards future prospects. He lastly submitted that the amount awarded towards other conventional heads is on the lower side, which may be enhanced suitably.

9. Per contra, learned counsel appearing for respondent No.3/Insurance Company submitted that learned Claims Tribunal in absence of any documentary evidence with respect to income of deceased has rightly assessed the monthly income of deceased as Rs.3,000/-. He further submitted that compensation awarded by learned Claims Tribunal to the tune of Rs.3,73,000/- is just and proper in the facts and circumstances of the case, which do not call for any interference.

10. I have heard learned counsel appearing for the parties and perused records carefully.

11. The claimants in their claim application have very specifically pleaded that deceased was doing business of Tea Stall on Dhamtari Bhakhara Road in the name and Style of K.P. Yadav Hotel and thereby earning Rs.10,000/- per month. In support of plea with respect to income of deceased, claimants have produced certificate issued by the office of Village Panchayat, Demar under the signature of Sarpanch of Village Panchayat, Demar which is Ex. A-10. To prove the aforementioned certificate, claimants have examined Shiv Kumar Dhruv (AW-3), who issued the certificate and proved the contents of Ex. A-10. Appellant No. 1- Dayawati Bai, wife of deceased, was also examined as AW-1 to prove the pleadings made in claim application.

12. Dayawati Bai (AW-1) and Shiv Kumar Dhruv (AW-3) both in their evidence have very specifically stated that on the date of accident, deceased was running a Tea Stall on Dhamtari Bhakhara Road. Apart from the aforementioned oral evidence, they have produced the document Ex. A-10, but the claimants could not have filed any other document of clinching nature to prove the income of deceased as Rs.10,000/- per month. In absence of any clinching and reliable piece of evidence with respect to income of deceased, it will be proper to assess the income of deceased on notional basis taking into consideration the minimum wages prevailing in the State and also the price index.

13. Learned counsel for the appellants at the time of hearing placed the schedule of income issued by Labour Commissioner-cum-Competent Authority under the Minimum Wages Act, 1948. On perusal of said Schedule-A for the period from 01/10/2012 to 31/03/2013, the wages prescribed after adding dearness allowance has been held to be Rs.4,646/-, to round up that can be taken as Rs.4,500/- per month.

14. In the opinion of this Court, looking to the age of deceased, work in which he was employed i.e. a business of Tea Stall, which is proved by the witnesses, it will be appropriate to assess the monthly income of deceased as Rs.4,500/- instead of Rs.3,000/- as assessed by learned Claims Tribunal.

15. 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 deceased as well as dependents of deceased, which is erroneous because multiplier is to be applied considering the age of deceased only as per dictum of Hon'ble Supreme Court.

16. The issue of application of multiplier has been considered by the Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[1] and as per chart provided in that judgment, the appropriate multiplier for the death of a person in between 26-30 years of age, is 17.

1 **(2009) 6 SCC 121**

17. In view of the pronouncement by Hon'ble Supreme Court, the learned Claims Tribunal committed error in applying multiplier of 15 considering the age of deceased as well as dependents of deceased, which is not sustainable and is hereby set aside.

18. As on the date of accident, deceased was aged about 30 years as per Exhibit A-5 i.e. postmortem report, therefore, correct multiplier applicable to the instant case will be 17 instead of 15 as applied by learned Claims Tribunal.

19. Learned Claims Tribunal has not awarded any 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], claimants are entitled for amount towards future prospects. The deceased on the date of accident was aged about 30 years and not in permanent employment therefore, claimants will be entitled for addition of 40% of the established income towards future prospects for calculating his total monthly income.

20. The other ground raised by the claimants with respect to awarding of meager amount towards conventional heads, it appears that learned Claims Tribunal has awarded only Rs. 13,000/- towards other conventional heads. The amount towards conventional heads is also fixed by the Hon'ble Supreme Court in the matter of **Pranay Sethi**

2 **(2017) 16 SCC 680**

(supra), therefore, in view of the law laid down in aforementioned case, claimants are also entitled for the amount of Rs.70,000/- towards conventional heads in total, in addition to the amount of compensation.

21. 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.4,500/- per month i.e. Rs.54,000/- per annum. By adding 40% of the aforesaid income towards future prospects (54,000 x 40% = 21,600), yearly income of deceased comes to Rs.75,600/- (54,000 + 21,600). After deducting 1/3rd towards his personal and living expenses from the income of deceased i.e. Rs.25,200/- (75,600 / 3), annual dependency of claimants comes to Rs.50,400/- (75,600 – 25,200). At the time of accident, deceased was aged about 30 years, therefore, in view of ratio laid down in the matter of **Sarla Verma (Smt.)** (supra), multiplier of 17 would be applicable in the present case. After applying multiplier of 17, total loss of dependency of claimants comes to Rs.8,56,800/- (50,400 x 17). In addition, the claimants are also entitled for Rs.70,000/- towards other conventional heads.

22. On the basis of above calculation, now appellants/claimants are held entitled for a total compensation of Rs.9,26,800/- (8,56,800 + 70,000) instead of Rs.3,73,000/- 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.

23. In the result, appeal is allowed in part and impugned award of learned Claims Tribunal is modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh