**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**M. A. (C) No. 982 of 2013**

1. Smt. Kamali Wd/o Jaddu Mandawi, Aged About 22 Years
2. Master Sadhu S/o Late Jaddu Mandawi, Aged About 9 Years
3. Miss Sumi D/o Late Jaddu Mandawi, Aged About 7 Years,
4. Master Narayan S/o Late Jaddu Mandawi, Aged About 3 Years
5. Master Hari...............(Died and Deleted)
6. Boja Mandawi............(Died and Deleted)
7. Smt. Budhani W/o Boja Mandawi, Aged About 54 Years

Appellant's No. 2 to 5 are miner through their mother Smt. Kamali (Appellant No.1)

All are Residence of Village Lalaguda P.S. Kodenar District Bastar (C.G.)

**---- Appellants**

**Versus**

1. Ashok Kumar S/o H. L. Masa, Aged About 26 Years, Residence of village Karli Barsepara, P.S. Geedam, District Dantewada C.G. (Driver)
2. Devlal Dewangan S/o Bihari Lal Dewangan R/o Surana Para, Geedam, District Dantewada (C.G.) (Owner)
3. The Branch Manager, the Bajaj Alliance General Insurance Co. Ltd., Branch Office Shiv Mohan Bhawan, Second Floor, Vidhan Sabha Road, Pandari, Raipur, District Raipur C.G.

**---- Respondents**

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| For Appellants | : Mr. P.K. Tulsiyan, Advocate |
| For Respondents No.1 and 2 | : None |
| For Respondent No. 3 | : Mr. Rohitashava Singh Advocate on behalf of Mr. Bhaskar Pyasi, Advocate |

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**Hon'ble Shri Justice Parth Prateem Sahu**
**Judgment On Board**

**08/05/2019**

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 07/08/2013 passed by Additional Claims Tribunal, (F.T.C.) Bastar at Jagdalpur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.151/12 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.2,40,400/- as compensation to the claimants in a death case.

2. Brief facts for disposal of this appeal are that on 27/03/2010, Jadduram Mandavi was returning from market after selling his paddy along with balance of four quintal paddy on a Pick-Up vehicle bearing registration No. CG-18/H/0914 (hereinafter referred to as 'offending vehicle'). On the way, near village Bastanar-Jamgaon, cabin door of offending vehicle was suddenly opened due to rash and negligent driving of respondent No.1, due to which, Jadduram Mandavi fell down from offending vehicle and sustained injuries over his person. Looking to his injuries, he was taken to Maharani Hospital, Jagdalpur and during course of treatment, he succumbed to those injuries. Matter was reported to concerned Police Station where crime No. 34/10 for offence under Section 304A IPC was registered against respondent No.1.

3. On account of death of Jadduram Mandavi, aged about 22 years, appellants/claimants who are wife, children and parents of deceased filed claim application under Section 166 of M.V. Act before Claims Tribunal claiming Rs.11,40,000/- as compensation against the respondents.

4. Respondents No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application and pleaded that deceased met with an accident due to his own negligence. It has been further pleaded that on the date of accident, driver of offending vehicle was possessing valid and effective driving licence and offending vehicle was insured with respondent No.3, therefore, owner and driver i.e. respondent No.1 and 2 are not having any liability to pay the amount of compensation.

5. Respondent No.3/Insurance Company submitted its reply to claim application and pleaded that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence. It was further pleaded that on the date of accident, there was no valid permit and fitness certificate of offending vehicle, therefore, there was violation of conditions of insurance policy and Insurance Company is not liable for payment of any amount of compensation.

6. Learned Claims Tribunal while appreciating pleadings and evidence placed on record by respective parties held that death of Jadduram Mandavi took place on account of rash and negligent driving of driver of offending vehicle i.e. respondent No.1, there was no violation of

conditions of insurance policy and awarded a total sum of Rs.2,40,400/- as compensation and held Insurance Company liable to indemnify insured by paying awarded amount of compensation.

7. Learned counsel appearing for appellants submitted that learned Claims Tribunal committed an error in awarding very meager amount of compensation. He further submitted that learned Claims Tribunal committed an error in holding income of deceased as Rs.3,000/- per month contrary to pleadings and evidence brought on record by claimants, that deceased was working as Carpenter and thereby earing Rs.4,000/- per month. He further submitted that learned Claims Tribunal applied multiplier of 8 only, whereas looking to the age of deceased to be 22 years, correct multiplier as per law laid down by Hon'ble Supreme court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[1] would be 18. He further submitted that learned Claims Tribunal committed an error in applying multiplier on the basis of age of parents. He lastly submitted that learned Claims Tribunal also committed an error in not awarding any amount of compensation towards future prospects and less amount has been awarded towards other conventional heads.

8. Per contra, learned counsel appearing for respondent No.3/Insurance Company supported impugned award and submitted that learned Claims Tribunal was justified in assessing the income of deceased as

1 **(2009) 6 SCC 121**

Rs.3,000/- per month as there is no proof of income of deceased as pleaded by claimants in claim application.

9. I have heard learned counsel appearing for parties and perused entire record carefully.

10. The question which arises for consideration is whether learned Claims Tribunal awarded just and reasonable amount of compensation to claimants.

11. Before learned Claims Tribunal, claimants have pleaded income of deceased as Rs.4,000/- per month by doing the work of Carpenter, but has not produced any evidence with respect to place of work of deceased, employer under whom deceased was working or any documentary evidence with respect to salary or income of deceased. The claimants have failed to prove income as pleaded in their claim application by producing acceptable piece of evidence, therefore, in the facts and circumstances of case, income of deceased is to be assessed on notional basis. The date of accident was 27/03/2010, therefore, looking to minimum wages rate prevailing in the Districts and State, it will be proper to hold engagement of deceased as labour work and his income to be assessed to Rs.3,500/- per month.

12. 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 parents of deceased which is erroneous because multiplier is to be applied on the basis of age of deceased himself.

13. The issue of application of multiplier in case where the deceased was a bachelor came before Hon'ble Supreme Court in the matter of **Sube Singh and another Vs Shyam Singh (dead) and others**[2], wherein 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**[3] 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**[4] 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**

2 **2018 (3) SCC 18**
3 **(2015) 2 SCC 180**
4 **(2015) 6 SCC 347**

**Company Limited**[5], 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**[6]. 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[7] 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)

5 **(2012) 6 SCC 421**
6 **(2013) 9 SCC 65**
7 **(2009) 6 SCC 121**

> 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 should be chosen from the said table with reference to the age of the deceased."
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> 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**[8], the appellants are justified in insisting for applying multiplier 18."

14. In the instance case, learned Claims Tribunal committed an error by applying multiplier of 8 looking to the age of parents of deceased and not of deceased. As on the date of accident, deceased was aged about 22 years, therefore, in view of judgment passed by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.)** (supra), correct multiplier in view of the law laid down by Hon'ble Apex Court in the matter of **Sube Singh** (supra), applicable to the instant case will be 18 instead of 8 as applied by learned Claims Tribunal.

15. Though deceased on the date of accident was aged about 22 years, but learned Claims Tribunal looking to the number of claimants had deducted 1/5$^{th}$ amount of his income towards personal and living expenses. Looking to the number of claimants who are parents, wife and four minor children and also considering the law laid down by Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.)** (supra),

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8 **(2017) 16 SCC 680**

in the opinion of this Court, learned Claims Tribunal has rightly deducted 1/5th amount of income of deceased towards his personal and living expenses.

16. 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 **Pranay Sethi** (supra), claimants are entitled for amount towards future prospects. The deceased was aged about 22 years on date of accident and not in permanent employment, therefore, claimants will be entitled for addition of 40% of the monthly income towards future prospects for calculating his total monthly income.

17. Learned Claims Tribunal has awarded only Rs.10,000/- towards other conventional heads. The amount towards conventional heads is also fixed by Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra), therefore, in view of the law laid down in aforementioned case, claimants are also entitled for amount of Rs.70,000/- towards conventional heads in total, in addition to the amount of compensation.

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.3,500/- per month i.e. Rs.42,000/- per annum. By adding 40% of the aforesaid income towards future prospects (42,000 x 40% = 16,800), yearly income of deceased comes to Rs.58,800/- (42,000 + 16,800). After deducting 1/5$^{th}$ towards his personal and living expenses from the income of deceased i.e. Rs.11,760/- (58,800 / 5), annual dependency of claimants comes to Rs.47,040/- (58,800 – 11,760). After applying multiplier of 18, total loss of dependency of claimants comes to Rs.8,46,720/- (47,040 x 18). Claimants are also entitled for Rs.70,000/- towards other conventional heads which makes the total compensation as Rs.9,16,720/-.

19. In the result, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly. Appellants/claimants are entitled for total compensation of Rs.9,16,720/- instead of Rs.2,40,400/- 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 liability for payment of the amount of compensation is on respondent No.3/Insurance Company. The other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-

**(Parth Prateem Sahu)**
**Judge**

Yogesh