NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 634 of 2013

1. Smt. Pyari Bai W/o Late Bhukhau Ram Sevta, Caste Gond, aged about 45 years,

2. Chamanlal S/o Late Bhukhau Ram Sevta Caste Gond, aged about 17 years, through minor legal representative Mother Pyaribai Wd/o Late Bhukhau Ram Sevta,

Both are resident of village Mulle, Post Baloda, Police Station & Tahsil Balod, District Durg (C.G.).

---- Appellants

Versus

1. Nomula Yadi Reddi S/o Siddiqui Reddy, Aged About 27 Years, R/o 9-51, Thimamuram, Tah. Mandal Ambhakur, District Nalgoda (Andhra Pradesh).

2. R. Krishna S/o Venkat Narayan R/o Qr. No. 16-120, Dithirur, Warangal, District Warangal (Andhra Pradesh)

3. Bajaj Allianze General Insurance Company Limited, Registered and Head Office G.E. Plaza, Air Port Road, Yekhda Pune, 411006, (India) Through Branch Manager, Branch Office, Station Road, Durg, in front of Afsara Talkies, Tahsil and District Durg (C.G.).

---- Respondents

For Appellants	: Mr. S. P. Sahu, Advocate
For Respondents No. 1 and 2	: None
For Respondent No. 3	: Mr. Sachin Singh Rajput, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

09/05/2019

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 01/02/2013 passed by Additional Motor Accident Claims Tribunal, Balod, District Durg (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.226/11 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.2,00,000/- as compensation to the claimants in a death case.

2. Brief facts for disposal of this appeal are that on 01/04/2010 at about 3.00 am, Dharmendra Kumar Sevta was going on a bore-well Truck bearing registration No.MP29-C-1590 (hereinafter referred to as 'offending vehicle') to village Kesamdum for digging bore-well as labour. On the way, offending vehicle which was driven by respondent No.1 rashly and negligently got turn turtled, due to which, Dharmendra Kumar Sevta came under the offending vehicle and succumbed to injuries sustained by him. Matter was reported to concerned Police Station based upon which crime bearing No.15/2010 for commission of offence under Section 304A of IPC was registered against respondent No.1 and charge-sheet was also filed before the competent Court.

3. On account of death of Dharmendra Kumar Sevta, appellants/claimants who are widow, mother and minor brother filed claim application under Section 163-A of M.V. Act before competent Claims Tribunal for grant of compensation claiming Rs.6,15,200/- against respondents on the grounds mentioned therein.

4. Respondents No. 1 and 2 who are driver and owner of offending vehicle remained *exparte* and did not give their appearance before learned Claims Tribunal even after service of notice.

5. Respondent No.3/Insurance Company submitted reply to claim application and pleaded that application under Section 163-A of M.V. Act is not maintainable as deceased do not come within the category of third party. It has been further pleaded that offending vehicle was not a passenger vehicle whereas deceased was travelling as a gratuitous passenger who is not covered under the policy. It has been also pleaded that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence to drive the offending vehicle and therefore, prayed for dismissal of claim application.

6. Learned Claims Tribunal while appreciating pleadings and evidence produced by respective parties held that death of Dharmendra Kumar Sevta took place in an accident which took place due to rash and negligent driving of driver of offending vehicle i.e. respondent No.1. Learned Claims Tribunal also held that there was no violation of conditions of insurance policy and while assessing the income of deceased as Rs.3,000/- per month, awarded a total sum of Rs.2,00,000/- as compensation.

7. Learned counsel appearing for appellants submitted that on the date of accident, age of deceased was 21 years, but learned Claims Tribunal committed an error by applying multiplier of 10 only. He further submitted that learned Claims Tribunal deducted 1/2 amount towards personal and living expenses ignoring the fact that mother of deceased is widow and he was survived by minor younger brother, therefore, he being the earning member of family has liability to maintain his family.

8. Per contra, learned counsel appearing for respondent No.3/Insurance Company submitted that learned Claims Tribunal correctly applied multiplier of 10 considering age of dependant mother. He further submitted that as deceased was unmarried, therefore, learned Claims Tribunal correctly awarded a total sum of Rs.2,00,000/- as compensation in the facts and circumstances of the case.

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

10. Learned Claims Tribunal committed an error in applying multiplier of 10 because multiplier is to be applied on the basis of age of deceased himself. 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 Others v. Shyam Singh (dead) and Others**[1], wherein the Hon'ble Supreme Court has 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

1 **2018 (3) SCJ 269**

> 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."

11. In view of the pronouncement by Hon'ble Supreme Court, learned Claims Tribunal committed error in applying multiplier of 10 and not considering age of deceased, which is not sustainable and is hereby set aside.

12. As on the date of accident, deceased was aged about 21 years as per Exhibit P-4 i.e. postmortem report, therefore, correct multiplier applicable to the instant case will be 18 instead of 10 as applied by learned Claims Tribunal.

13. The learned Claims Tribunal deducted 1/2 amount of monthly income towards personal and living expenses of the deceased is not correct looking to the fact that deceased being elder son and had lost his father earlier, he was having liability towards his widow mother and younger brother. The amount towards personal and living expenses to be deducted from the income of deceased has been decided by the Hon'ble Supreme Court in the matter of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**[2] wherein Hon'ble Supreme Court has specifically held that in case of death of unmarried persons, deduction may be 50% of assessed income towards personal and living expenses, but at the same time, Hon'ble Supreme Court has also observed that deduction of personal and living expenses can be varied looking to the number of claimants/ dependants as well as the dependency of family members.

14. In the instant case, though the number of dependants are two but deceased being the earning member of family has liability to maintain his widow mother and minor brother, therefore, in the opinion of this Court, it will be appropriate to deduct 1/3rd amount towards personal and living expenses instead of 1/2.

15. For the aforesaid reasons, amount of compensation awarded by learned Claims Tribunal requires recalculation, which this Court calculates as under:-

Learned Claims Tribunal held income of deceased on the date of accident to be Rs.3,000/- per month i.e. Rs.36,000/- per annum. After deducting 1/3rd towards his personal and living expenses from the income of deceased i.e. Rs.12,000/- (36,000 / 3), annual dependency of claimants comes to Rs.24,000/- (36,000 – 12,000). At the time of accident, deceased was aged about 21 years, therefore,

2 **(2009) 6 SCC 121**

in view of ratio laid down in the matter of **Sarla Verma (Smt.)** (supra) multiplier of 18 would be applicable in the present case. After applying multiplier of 18, total loss of dependency of claimants comes to Rs.4,32,000/- (24,000 x 18). Claimants are also entitled for Rs.20,000/- towards other conventional heads as awarded by learned Claims Tribunal.

16. On the basis of above calculation, award passed by learned Claims Tribunal is modified accordingly and now appellants/claimants are held entitled for a total compensation of Rs.4,52,000/- (4,32,000 + 20,000).

17. In the result, appeal is allowed in part and impugned award of learned Claims Tribunal is modified accordingly. Appellants are entitled for total compensation of Rs.4,52,000/- instead of Rs.2,00,000/- 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. Respondents will be jointly and severally liable for payment of amount of compensation. The other conditions imposed by learned Claims Tribunal shall remain intact.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh