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**HIGH COURT OF CHHATTISGARH BILASPUR****M. A. (C) No. 889 of 2014**

Santosh Upadhayay son of Supari Lal Upadhayay, Aged About 45 Years, R/o A-14, Awantika Colony, Jagdalpur, P.S. Bodhghat, Civil and Revenue District Bastar (C.G.).

**---- Appellant****Versus**

1. Smt. Bindu Yadav Widow of Late Harinandan Yadav, Aged About 48 Years.
2. Arun Yadav Son of Late Harinandan Yadav, Aged About 30 Years.
3. Raj Yadav @ Sanbhu Son of Late Harinandan Yadav, Aged About 26 Years.
4. Dilip Yadav Son of Late Harinandan Yadav, Aged About 17 Years.
5. Basant Yadav Son of Late Harinandan Yadav, Aged About 12 Years.

Respondent No.4 and 5 being minor through their natural guardian mother Respondent No.1 (Smt. Bindu Yadav), All respondents by Caste Rawut, All respondents Resident of Metguda, Jawahar Nagar Ward, Jagdalpur, P.S. City Kotwali, Civil and Revenue District Bastar (C.G.).

**---- Respondents**


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| For Appellant   | : Shri Punit Ruparel, Advocate        |
| For Respondents | : Shri Pravin Kumar Tulsyan, Advocate |

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**Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**  
**Hon'ble Shri Parth Prateem Sahu, Judge**

**Judgment on Board****Per Parth Prateem Sahu, Judge****17.11.2020**

1. I.A. No.01 has been filed to condone delay of 43 days in filing the appeal. For the reasons assigned in the application, the same is allowed. Delay of 43 days in filing the appeal is hereby condoned. The appeal and cross-objection both are admitted. With the consent of parties, case is heard finally.

2. Owner-cum-driver of offending vehicle has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 24.04.2014 passed by the Motor Accident Claims Tribunal, Bastar at Jagdalpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.97 of 2013 whereby learned Claims Tribunal allowed the application filed under Section 166 of the M.V. Act in part and awarded Rs.1,40,000/- as compensation in a fatal accident case.
3. Respondents have filed cross-objection seeking enhancement of impugned award on the grounds mentioned therein.
4. Brief facts relevant for disposal of this appeal, are that, on 14.11.2012, Harinandan Yadav was travelling on a Hero Honda Motorcycle bearing No.CG-17/KC/3751 (hereinafter referred to as 'offending vehicle') owned and driven by non-applicant No.1/appellant as pillion rider. When they reached near Bodhghat road in front of Rikha Hotel, non-applicant No.1 drove his offending vehicle rashly and negligently, dashed with Truck parked on the side of road bearing No.CG-18/H/5079 and caused accident. In the said accident, Harinandan Yadav suffered grievous injuries over his left leg and other parts of body. He was taken to Maharani Hospital, Jagdalpur where during the course of treatment, he succumbed to the injuries on 22.11.2012. The accident was

reported to concerned Police Station, based on which, crime No.352 of 2012 was registered against non-applicant No.1.

5. Claimants, who are widow and children of deceased Harinandan Yadav filed an application under Section 166 of the M.V. Act seeking compensation of Rs.10,10,000/- pleading therein that on the date of accident, deceased was an able bodied person aged about 55 years and earning Rs.200/- per day from the business/sale of cosmetic items (*Manihari*).
6. The non-applicant submitted reply to claim application while denying the pleadings made therein, pleaded that while he was returning to his house on the fateful day, he met with a person (deceased) near bus stand who asked for a lift up to Rikha Hotel. On his request, he gave lift to deceased who was an old age person and when they reached near Rikha Hotel, deceased jumped out from the offending vehicle, on account of which, he suffered grievous injuries. It was further pleaded that claimants have not impleaded driver, owner and insurer of the Truck; non-applicant by profession is a driver, earning Rs.4,000/- per month and deceased died on account of accidental injuries suffered by him due to his own negligence.
7. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties held that Harinandan Yadav died on account of motor accidental

injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant and awarded Rs.1,40,000/- considering the income of deceased as Rs.36,000/- per annum and age of deceased as 70 years on the date of accident.

8. Shri Punit Ruparel, learned counsel for the appellant/owner-cum-driver of offending vehicle submits that claimants have failed to prove negligence on the part of appellant; deceased was an old age person, aged about 70 years, hence, no compensation can be awarded by applying the multiplier. He further submits that deceased died not on account of accidental injuries, but on account of infection over the injuries suffered by him, hence claimants are not entitled for any amount of compensation, but for the amount of compensation on the head of no fault liability.
9. Per contra, Shri Pravin Kumar Tulsyan, learned counsel for respondents/claimants opposes the submission made by learned counsel for the appellant and submits that learned Claims Tribunal upon appreciation of evidence and pleadings brought on record, rightly arrived at a finding that deceased died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by the appellant. He further contended that learned Claims Tribunal erred in awarding meager amount of compensation by assessing the income of deceased on

lower side and assessing the age of deceased as 70 years without there being any clinching piece of evidence on record. It is contended that amount of compensation awarded on other conventional heads are also on lower side, which requires to be enhanced suitably. He lastly contended that he has filed cross-objection for enhancement of the award.

10. We have heard learned counsel for the parties and perused the record carefully.
11. To appreciate the submission made by learned counsel for the appellant/owner-cum-driver of offending vehicle that deceased himself jumped out from the offending vehicle and met with an accident, we have perused the record of claim case. The appellant has pleaded in reply to claim application that his motorcycle not dashed with the Truck, but it is the deceased who jumped out from motorcycle and met with an accident. In support of this pleading, appellant has not brought any evidence on record, even appellant/non-application himself did not appear into witness box. Perusal of order-sheet dated 14.04.2014 would show that counsel representing the appellant has stated that he does not want to examine any witness on behalf of non-applicant.
12. From the aforementioned facts available on record where appellant/non-applicant himself did not enter into witness box and led any evidence, pleadings made by him in reply to

claim application cannot be read as evidence. In absence of any evidence brought on record by the appellant, as such, the ground raised by learned counsel for the appellant that deceased himself was liable for the accident is not sustainable and is hereby rejected.

13. So far as the other ground raised by learned counsel for the appellant with regard to quantum of award of compensation, Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** has categorically held that there shall be an application of multiplier of 5 where the deceased person aged above 65 years and learned Claims Tribunal has applied the multiplier of 5, which is in consonance with the aforementioned ruling.
14. In view of above, we do not find any merit in the appeal filed by appellant/non-applicant/owner-cum-driver of offending vehicle. The appeal is dismissed.
15. Now, we will consider the grounds raised by learned counsel for the respondents/claimants in cross-objection. Shri Tulsyan, learned counsel for the claimants/cross-objectors argued that learned Claims Tribunal erred in assessing the income of deceased as Rs.3,000/- per month only, which is on lower side. Even if, claimants have failed to prove the income of deceased, then also, learned Claims Tribunal ought to have taken into consideration the date of accident,

price index, cost of living for assessing the income of deceased on notional basis. He points out that accident was of 14.11.2012, hence, learned Claims Tribunal ought to have assessed the income of deceased as Rs.5,000/- per month. It is contended that learned Claims Tribunal erred in applying deduction of  $\frac{1}{3}^{\text{rd}}$  instead of  $\frac{1}{4}^{\text{th}}$  overlooking the number of claimants to be five. He places reliance upon ruling of Hon'ble Supreme Court in case of **Sarla Verma** (supra) to support his contention. It is further contended that learned Claims Tribunal erred in awarding only Rs.20,000/- on other conventional heads, which is much on lower side in view of law laid down by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**. He lastly argued that learned Claims Tribunal has not awarded any amount towards medical expenditure even though the claimants have placed on record the documents showing that deceased took treatment as inpatient for about 9 days at Maharani Hospital, Jagdalpur from 14.11.2012 to 22.11.2012.

16. Opposing the submission made by learned counsel for the respondents/claimants, Shri Ruparel, learned counsel for the appellant/owner-cum-driver of offending vehicle submits that

learned Claims Tribunal taking into consideration the age of deceased has assessed amount of compensation, which does not call for any interference.

17. True it is that claimants have failed to place on record any documentary or any admissible piece of evidence to prove the income of deceased, but then, income of deceased is to be assessed considering the date of accident, cost of living, price index, wage structure, number of dependents and their age. In the case at hand, date of accident was 14.11.2012, deceased was survived by five legal representative, out of which, two of the children of deceased were minor on the date of filing of claim application. Taking into consideration overall facts and circumstances of the case, we find it appropriate to assess the income of deceased as Rs.4,500/- per month.
18. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimants requires re-consideration and re-computation, which is as under :

The income of deceased as assessed by this Court is taken as Rs.4,500/- per month and Rs.54,000/- per annum. On the date of accident, deceased was survived by five dependents, therefore, in view of dictum of Supreme Court in **Sarla Verma** (supra), appropriate deduction would be  $\frac{1}{4}^{\text{th}}$ . After deducting  $\frac{1}{4}^{\text{th}}$  towards personal and living

expenses of deceased, yearly loss of dependency of claimants will come to Rs.40,500/- (54,000 / 4 and 54,000 – 13,500). By applying the multiplier of 5, the amount of dependency comes to Rs.2,02,500/- (40,500 x 5). Apart from above, claimants will be further entitled for a sum of Rs.40,000/- towards spousal consortium to the wife (payable to the spouse because of the death of partner), Rs.40,000/- towards parental consortium to the children (payable to children because of the death of parents), Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

19. Now, the claimants/cross-objectors are entitled for total compensation of Rs.3,12,500/- (2,02,500 + 40,000 + 40,000 + 15,000 + 15,000) instead of Rs.1,40,000/- 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. Other conditions imposed by learned Claims Tribunal shall remain intact.
20. In the result, appeal filed by the appellant/owner of the offending vehicle is dismissed and cross-objection filed by the claimants/cross-objectors is allowed in part. Impugned award is modified to the extent indicated herein-above.

Sd/-  
**(P. R. Ramachandra Menon)**  
**Chief Justice**

Sd/-  
**(Parth Prateem Sahu)**  
**Judge**