**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No. 1268 of 2015**

1. Uttamchand Dhritlahre S/o Kunwardas Dhritlahre, Aged About 45 Years
2. Smt. Vimla Devi W/o Uttamchand Dhritlahre, Aged About 42 Years

   Both R/o Kishanpur, Post - Dashrangpur, Police Station - Jarhagaon, District - Bilaspur Chhattisgarh

**---- Appellants/Claimants**

**Versus**

1. Durga Prasad Pandey S/o Late Lakhan Prasad Pandey, R/o Ward No. 09, Laxmi Chowk, Bodla, Police Station - Bodla, District - Kawardha Chhattisgarh Driver Of Bolero Pick-Up No. C G 09 B 0508
2. Smt. Asha Kesharwani W/o Yashkaran Kesharwani, R/o Main Road, Bodla, Police Station - Bodla, District Kawardha Chhattisgarh Owner Of Bolero Pick-Up No. C G 09 B 0508
3. The Oriental Insurance Company Limited Through The Chief Manager, Head Office, In Front Of Rajeev Plaza, In Front Of Bus Stand, Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

**---- Respondents/Non-Applicants**

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| For Appellants | : | Shri Keshav Dewangan, Advocate |
| For Respondent-3/Insurance Company | : | Shri Anumeh Shrivastava, Advocate |

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**Hon'ble Shri Justice Parth Prateem Sahu**

**Order on Board**

**05.11.2020**

1. Challenge in this appeal is to the award dated 06.05.2015 passed by the Additional Motor Accident Claims Tribunal, Bilaspur (for short, 'Claims Tribunal') in Claim Case No.125 of 2013 seeking enhancement of amount of compensation, whereby learned Claims Tribunal allowed the application under section 166 of the Act of 1988 in part and awarded Rs.1,90,000/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 16.10.2011 (by mistake written as 16.10.2014 in the impugned award) Lakshminarayan was travelling on Tata Magic along with other persons and was coming to

Bilaspur. On the way at about 10.30am, NA-1 while driving the Bolero Pick up vehicle bearing No. CG 09 B 0508 rashly and negligently, dashed the Tata Magic on coming towards wrong side and caused accident. In the said accident, Laxminarayan suffered grievous injuries on his head, waist, chest and became unconscious. He was brought to the District Hospital, Bilaspur, where during the course of treatment succumbed to the injuries on 19.10.2014. The accident was reported to concerned Police Station, based upon which crime was registered against NA-1.

3. Appellants, who are parents of deceased filed application under Section 166 of the Act of 1988, seeking compensation of Rs.30,50,000/- pleading therein that on the date of accident Laxminarayan was doing business of selling of fruits and vegetables, thereby earning Rs.10,000-15,000/- per month.

4. NA-1 submitted reply to the claim application, denying pleadings made therein and further pleaded that it is the Tata Magic vehicle bearing No. CG-10-T-0783 in which deceased was travelling, was driven by its driver rashly and negligently. It is further pleaded that Owner, Driver and Insurance Company of the Tata Magic vehicle were not impleaded in the array of Non-applicants, hence, there is non-joinder of necessary parties. There was head on collusion between the two vehicles. On the date of accident, offending vehicle was insured with NA-3, Insurance Company, hence, NA-3 is responsible and liable for payment of amount of compensation. After submitting reply, NA-1 and NA-2 remained *ex-parte*.

5. NA-3 Insurance Company submitted reply to the claim application, while denying the pleadings made therein further pleaded that in absence of verification of Insurance Policy, the Insurance of the offending vehicle with NA-3 is denied. Accident was not informed by owner of the offending vehicle to the Insurance Company. NA-1 was not possessed with valid and effective driving license on the date of accident, there is no valid permit and fitness of the offending vehicle, as such there was breach of policy conditions.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that Laxminarayan died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA-1; the Owner, Driver and Insurance Company of Tata Magic to be not necessary parties, contributory negligence and breach of policy conditions were not found to be proved and awarded Rs.1,90,000/- as compensation.

7. Shri Keshav Dewangan, learned counsel for the appellants submits that the learned Claims Tribunal erred in awarding meager amount of compensation. He submits that date of accident is of 16.10.2011, deceased was an abled body person engaged in the business of fruit and vegetable selling and earning much more than the income assessed by the Tribunal. He submits that even the wages under the minimum wages of an ordinary labour would be more than what the Tribunal assessed. Income of the deceased has been assessed as Rs.3,000/- per month only. He further contended that the Tribunal erroneously applied multiplier of 10, overlooking the age of deceased on the date of accident as 18 years. He

submits that as per the guidelines framed by Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another reported in** (2009) 6 SCC 121, appropriate multiplier for age group of 15 to 20 is 18. Future prospects as held by Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680 is also not awarded in this case. He submits that looking to the age of deceased to be 18 years, there would be addition of 40% of established income towards future prospects. It is also contended that the Tribunal erred in awarding only Rs.1,00,000/- on other conventional heads, which requires to be enhanced in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra) and **Magma General Insurance Company Limited Vs Nanu Ram** reported in 2018 ACJ 2782.

8. Controverting the submissions made by learned counsel for the appellants, Shri Anumeh Shrivastva, learned counsel for respondent-3/ Insurance Company submits that the deceased was only 18 years of age and unmarried person on the date of accident. Learned Claims Tribunal taking into consideration overall facts and circumstances of the case and the judgment passed by Hon'ble Supreme Court in case of Muncipal Corporation of **Municipal Corporationh of Greater Mumbai Vs. Laxman Iyer and another** reported in (2003) 8 SCC 73, has awarded just amount of compensation which does not call for any interference.

9. I have heard learned counsel for the respective parties and also perused record of the claim case.

10. To appreciate the submission of learned counsel for the appellants with regard to income assessed by learned Claims Tribunal as Rs.3,000/- per month to be on lower side, the date of accident is 16.10.2011, claimants have failed to prove income of the deceased by placing any documentary or admissible piece of evidence before the Tribunal. In absence of any admissible piece of evidence placed on record, income pleaded in the claim application cannot be treated to be proved income of the deceased. In such cases, it is the duty of Claims Tribunal and the Courts to assess income of the deceased on notional basis based on occupation, wage structure prevailing on that date, cost of living and price index on the date of accident.

11. Taking into consideration overall aspects of the case, I find it appropriate to reckon income of the deceased as Rs.4,000/- per month and Rs.48,000/- per annum.

12. So far as the second submission with regard to application of multiplier in case of death of bachelor is concerned, law in this regard is well settled in case of **Sube Singh and another Vs Shyam Singh (dead) and others** reported in 2018 (3) SCC 18, in which Hon'ble Supreme Court has 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**[1]

[1] (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 Vs Vipin Kumar Sharma**[2] 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:

> "11. The remaining question is only on multiplier. The High Court following **Santosh Devi Vs National Insurance Company Limited**[3], 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**[4]. 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)
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> > "36.In Sarla Verma Vs DTC[5] 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) 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

2 (2015) 6 SCC 347
3 (2012) 6 SCC 421
4 (2013) 9 SCC 65
5 (2009) 6 SCC 121

> 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)
> 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."

13. In the aforementioned judgment of Hon'ble Supreme Court in categorical terms upon considering its earlier judgments, has held that appropriate multiplier even in case of unmarried persons has to be applied considering the age of deceased and not the age of parents / claimants. Taking into consideration judgment passed by Hon'ble Supreme Court in this regard and considering the facts and circumstances of the case, the multiplier applied by Tribunal of 10 is set aside and it is held that appropriate multiplier applicable in this case to be of 18.

14. The third ground raised by learned counsel for the appellants with regard to not awarding any compensation towards future prospects is concerned, Hon'ble Supreme Court has considered the award of future prospects for the purpose of calculating amount of compensation in a death and permanent disability cases and it is held that if the person / deceased is not in permanent employment or self employed, and below 40

years of age, then there shall be addition of 40% of the established income towards future prospects.

15. In view of above, there shall be addition of 40% of established income towards future prospects for calculating the total income of the deceased on the date of accident.

16. Learned Claims Tribunal only awarded Rs.10,000/- on other conventional heads which is much on lower side in view of judgment passed by Hon’ble Supreme Court in cases of **Pranay Sethi** (supra) **and Magma** (supra)**.**

17. The amount of compensation fixed on other conventional heads is to be increased by 10% after every three years, as the date of pronouncement of above judgment by Hon'ble Supreme Court is of 31st October, 2017. Hence, there will be increase of 10% in the amount of compensation on other conventional heads, as quantified therein.

18. For the foregoing reasons, I propose to re-calculate/recompute the compensation as under:

> a) Income of the deceased as assessed by the Tribunal is Rs.4,000/- per month and Rs.48,000/- per annum.
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> b) By adding 40% to the established income of the deceased, total yearly income comes to Rs.67,200/- {48000 + (48000 x 40/100)}.
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> c) After deducting ½ (50%) towards personal and living expenses from the yearly income of the deceased, yearly loss of dependency comes to Rs.33,600/- {67200 – (67200 x ½ )}.

d) By multiplying yearly loss of dependency with multiplier of 18, total loss of dependency comes to Rs.6,04,800/- (33600 x 18).

e) Apart from the above total loss of dependency, claimants are further entitled for Rs.44,000/- {40000 + (40000 x 10/100)} towards filial consortium, Rs.16,500/- {15000 + (15000 x 10/100)} towards funeral expenses and Rs.16,500/- {15000 + (15000 x 10/100)} towards loss of estate.

19. Now, appellants/claimants are entitled for a total sum of **Rs.6,81,800/-** (604800 + 44000 + 16500 + 16500) instead of Rs.1,90,000/- as awarded by the learned Claims Tribunal. This amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by the Claims Tribunal will remain intact.

20. In the result, appeal filed by the claimants for enhancement of compensation is allowed in part and the impugned award is modified to the extent as indicated above.

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

padma