NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1363 of 2014

- The New India Assurance Co. Ltd. Parkha Bhawan, Station Road, Durg, Thru- Auth. Sign. For Divisional Office 460500, Thru New India Assu. Co.Ltd., Divisional Office- Opposite Rajiv Plaza, Old Bus Stand, Bilaspur C.G., Chhattisgarh

---- Appellant/Insurer NA3

Versus

1. Smt. Hemlata Dixit Wd/o Late Dr. Awdhesh Dixit, Aged About 39 Years
2. Minor Shivom Dixit Aged About 10 Years Thru- Next Friend Mother Smt. Hemlata Dixit

   Both r/o C-108 Guru Ghasidas Society, New Rajendra Nagar, Raipur (CG)
3. Dhani Ram Sahu S/o Harish Chandra Aged About 46 Years R/o Charbhata, Gunderdehi, District : Durg, Chhattisgarh (Driver of the Offending Truck No.CG09 B-0389)
4. Shayar Bai W/o Bheekam Chandra Jain R/o Kalangpur, Tah. Gundardehi, Distt. Durg C.G., District : Durg, Chhattisgarh (Owner of the Offending Truck No.CG09 B-0389)
5. Dr. Satya Prakash Dixit S/o Late Ramnath Dixit Aged About 69 Years
6. Smt. Snehlata Dixit W/o Dr.Satya Prakas Dixit Aged About 64 Years

   5 and 6 Both R/o C-108 Guru Ghasidas Society New Rajendra Nagar, District : Raipur, Chhattisgarh

----Respondents

For Appellant	:	Shri BN Nande, Advocate
For Respondents-1, 2, 5 and 6	:	Shri Manoj Paranjpe, Advocate
For Respondents-3 and 4	:	None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
06.10.2020

1. Appellant / Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 09.09.2014 passed by the Chief Motor Accidents Claims Tribunal, Raipur (for short, 'Claims Tribunal') in Claim Case-1 of 2012 whereby learned Claims Tribunal allowed application under Section 166 and 140 of

the Act of 1988 in part and awarded Rs.1,00,00,000/- (one crore) as compensation in a death case.

2. Facts relevant for disposal of this appeal are that on 30.09.2011 Dr.Awadhesh Dikshit went to Kawardha from Raipur on account of some professional work. When he was returning from Kawardha on his Car bearing No.KL10N-7109 to Raipur, on the way near Village Baghi, one Truck bearing No.CG09B-0389 (for short, 'offending vehicle') driven rashly and negligently by its driver NA-1 dashed the Car of Dr.Awdhesh Dikshit. In the said accident, Dr.Awadhesh Dikshit suffered grievous injuries over his person and died.

3. Claimants, who are widow and children of late Dr.Awdhesh Dikshit filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.1,35,00,000/- on different heads, pleading therein that on the date of accident, deceased was aged about 44 years engaged in a profession of medical practitioner as Ophthalmologist, and was having his own Nursing Home. He was also visiting consultant in different nursing homes and rendering his services.

4. NA-1 and NA2, who are driver and owner of the offending vehicle have not submitted their reply and were proceeded *ex-parte*.

5. NA-3/Insurance Company, appellant herein submitted its reply denying the contents of the claim application. In additional pleadings, it was pleaded that NA-1 was not possessing valid and effective driving license, there was no valid permit and fitness of the offending vehicle on the date of accident and thereby, NA1 & 2 plied their vehicle in breach of

policy conditions. It is also pleaded that the vehicle has been falsely impleaded in the case, and the vehicle was actually not involved in any accident. In the FIR, complaint was lodged against vehicle bearing No.CG 09 **B-3089** and not against vehicle bearing No.CG 09 **B-0389**. Implication of the vehicle was reported to Superintendent of Police, and the amount of compensation is highly exaggerated.

6. Respondents 4 & 5 submitted reply to the claim application pleading therein that NA-4 is father and 5 is mother of late Dr Awdhesh Dikshit. They have not filed any application seeking amount of compensation before any other Tribunal or Court.

7. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record held that NA-1 while driving the offending vehicle rashly and negligently, caused accident to car of Dr Awdhesh Dikshit resulting in his death; contributory negligence was not found to be proved, breach of policy conditions on account of not having valid and effective driving license with NA-1 is also not found to be proved; and awarded Rs.1,00,00,000/- as compensation fastening liability upon NA-1, 2 & 3 jointly and severally.

8. Shri BN Nande, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal erred in awarding amount of compensation on higher side. Claimants have not placed on record legal and admissible piece of evidence to prove income of the deceased but even then, the Tribunal has held the income of the deceased as Rs.8,33,332/- which is perverse to the material available on record; applied

wrong multiplier in the facts of the case; he further contended that learned claims tribunal erred in not considering the entire pleadings, documents and oral evidence placed on record in its entirety and arrived at a finding that vehicle No.CG-09B-0389 is involved in the accident ignoring the contents of documents Ex.D1 to D3. The claimants have not filed complete documents enclosed along with the charge-sheet but have placed on record copy of charge-sheet as Ex.P1 and suppressed other documents from the proceedings of the Tribunal which itself shows that the claimants have not approached the Tribunal with clean hands. Copy of FIR, requisition for MLC report, requisition of TM report reflect different vehicle numbers than the vehicle number which has been shown to be involved in the claim application. Deduction made by learned claims tribunal towards personal and living expenses of the deceased is erroneous because father of the deceased i.e. NA-4, who himself is a doctor by profession cannot be treated to be dependent upon the deceased. Appropriate deduction should be 1/3rd and not 1/4th of income of the deceased.

9. Opposing the submissions of learned counsel for the appellant, Shri Manoj Paranjpe, learned counsel for the claimants submits that learned Claims Tribunal taking into consideration the charge-sheet filed by Police after conclusion of the investigation of a crime showing the involvement of the offending vehicle in the accident has passed the impugned award. He further contended that mentioning of other number of vehicle in the FIR, MLC requisition and PM requisition may be due to some error while recording the number of offending vehicle at that relevant point of time. But once the charge-sheet is filed after completion of the investigation, the

contents of the charge- sheet cannot be ignored. He also submits that though the respondents non-applicants have placed on record copy of the complaint made to higher authorities but they have not further pursued the complaint or filed any proceeding before the competent court of not taking any action on the complaint and false implication of the offending vehicle. Submission made by the learned counsel for the appellant could not be accepted in absence of the evidence. He further submits that deceased was a Doctor by profession and having roaring private practice. The claimants have placed on record certain documents to prove income of the deceased and learned Claims Tribunal after analysing the documents placed on record, assessed income of the deceased which cannot be said to be erroneous. Looking to the age of father of the deceased (Respondent No.4) to be 69 years, he cannot be treated as self dependent hence the Tribunal is justified in arriving at a finding that there are four dependants of deceased and deducted $1/4^{th}$ towards his personal and living expenses. Claimants have placed on record copy of application under Order 41 Rule 27 of the CPC placing the documents obtained from Income Tax Department and other relevant documents showing his earning from profession to prove the income of the deceased. He further pointed out that as per the direction of this Court vide order dated 25.09.2020 he has placed on record the computation chart prepared by him based on the documents available on record of claim case in which income of the deceased has been shown as Rs.5,55,726/- apart from income from other sources.

10. We have heard learned counsel for the parties and also perused the record of claim case.

11. So far as the submissions made by learned counsel for the appellant/Insurance Company that the vehicle involved in the case is CG 09 B-0389. Insurance Company has placed reliance upon the initial documents of criminal case i.e. FIR, MLC requisition in which number of vehicle mentioned as CG 09 B-3089 etc. There may be chances for wrong recording of number of the offending vehicle after the accident by the Police persons for one or the other reason. Upon going through the record the number which is mentioned in FIR is 'CG-09-B-3098'. But after conclusion of the investigation charge-sheet has been filed for the vehicle bearing number 'CG09-B-0389'.

12. From the above, what could not be lost sight of the fact is, that there may be possibility of writing the number of the offending vehicle (CG-09-B-0389) in the FIR in different chronology as CG09 B-3089. The contents of the charge-sheet which is mentioned by the investigating authority after conclusion of the investigation *prima-facie* can be accepted to be the correct one unless and until it is proved otherwise before the competent court.

13. In the case at hand, though a complaint has been said to be lodged before the higher police officials, but it has not been pursued any further or not filed any case before competent court against falsely implicating of the offending vehicle in the accident. In complaint made by the owner of offending vehicle it is only mentioned that it was not plied on that road, but

they have not placed on record any evidence to prove the contents of complaint about the whereabouts of the offending vehicle on the date of accident. Offending vehicle is a commercial vehicle, there must be a document of its movement from one place to another but nothing is brought on record. In absence of any reliable evidence the contents of complaint cannot be accepted as gospel truth. Claim cases are to be decided on preponderance of probabilities. The accident was reported after completion of investigation, 'Final Report' was filed by Police before the Court of jurisdictional Magistrate against the offending vehicle.

14. In view of aforementioned facts and circumstances of the case, the submission made by learned counsel for the appellant that learned Claims Tribunal erred in not accepting the plea raised by the Insurance Company that offending vehicle mentioned in the claim application has been falsely implicated, is not sustainable. We affirm the finding recorded by learned Claims Tribunal with regard to the involvement of the offending vehicle in the accident.

15. So far as the other ground raised by learned counsel for the Insurance Company with regard to the assessment of income of the deceased to be on higher side is concerned, upon going through the record it would reveal that the claimants have filed copy of the Income Tax return submitted by the deceased in his personal name for the assessment year 2009-10 submitted on 31.03.2010. ITR in the name of the deceased (HUF) submitted on 29.03.2010 and the ITR of India Morgaon Medical Finance of the year 2010.

16. Claimants have also placed on record ITR in personal name of the deceased for the year 2011-12 said to be submitted in the month of September, 2011. The accident took place on 30th September, 2011. As per the ITR of the year 2011-12 date of submission of which is mentioned as 24th September 2011 showing income from business and other sources as Rs.5,55,726/-. The ITR before the Income Tax Department was submitted before the date of accident. No person or human being can predict the future incident like his own death, particularly looking to the person who on the date of submission of income tax return was an able bodied person with stable mind. So far as the income as stated before learned Claims Tribunal and filed certain documents of income tax return with regard to the HUF, in absence of any specific proof that appellant is having source of income but for mentioning the name only cannot be taken as any part of it as individual income of the deceased. With regard to the other return of Indo American Medical Foundation, there is no evidence or proof as who are members and what was the income of deceased from it.

17. For the foregoing reasons as the documents placed on record as part of Ex.P8 at page no. 120 of the records of claim case showing income of the deceased as Rs.5,55,726/-, and further the document placed on record as Annexure/B along with application filed under Order 41 Rule 27 read with Section 151 CPC, we find it appropriate to assess the income of the deceased based on the ITR filed prior to the death to be the gross total income of the deceased on the date of accident, which is Rs.5,55,726/-.

18. We find support from the recent judgement passed by Hon'ble Supreme Court in case of **Malarvizhi Vs United India Insurance**

Company Limited and another reported in 2020 (4) SCC 228, in which Hon'ble Court has held thus:

> "10. The Tribunal proceeded to determine the agricultural income arising from 36.76 acres of land on the basis of two judgments of the High Court. The Tribunal arrived at two different figures by applying the decisions and proceeded to determine the agricultural income on an average of the two amounts. The Tribunal superimposed a possible value of income from agricultural land despite a clear indication in the income tax returns of the income from agricultural land. The method adopted by the Tribunal is not sustainable in law. On the other hand, the High Court has proceeded on the basis of the income reflected in the income tax returns for the assessment year 1997-1998. The relevant portion of the return reads:
>
> | | | |
> |---|---|---|
> | Income from House property | - | Rs. 1,920 |
> | Business profit (other than 14.b) | - | Rs. 1,21,071 |
> | Net Agricultural income | - | Rs. 88,140 |
>
> The tax return indicates an annual income of Rs 2,11,131 in the relevant assessment year. Mr Jayanth Muth Raj, learned Senior Counsel appearing on behalf of the appellant contended that other documents were marked which reflected the income of the deceased. We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased."

19. Other submission raised by learned counsel for the appellant / Insurance Company that learned Claims Tribunal erred in awarding excessive amount of Rs.4,25,000/- on other conventional heads contrary to the law laid down by Hon'ble Supreme Court in case of **National**

Insurance Company Vs Pranay Sethi reported in 2017 16 SCC 680 appears to be correct.

20. Hon'ble Supreme Court in the aforementioned case has considered the heads under which compensation can be awarded on other conventional heads as mentioned in Second Schedule of the Act of 1988 in which there is specific mention of awarding compensation on the head of loss of consortium, loss of estate and funeral expenses. The award of amount of compensation for loss of consortium further been clarified by Hon'ble Supreme Court in case of **Magma General Insurance Company Limited Vs Nanu Ram** reported in (2018)18 SCC, that widow is entitled for Rs.40,000/- towards loss of spousal consortium, child / children are entitled for loss of parental consortium of Rs.40,000/- and parents are entitled towards filial consortium of Rs.40,000/-, apart from the amount of Rs.15,000/- towards loss of estate and Rs.15,000/- funeral expenses as held by Hon'ble Supreme Court in case of **Pranay Sethi** (supra).

21. As we are accepting these submissions made by learned counsel for the appellant / Insurance Company for interfering with the quantum of compensation awarded by the Claims Tribunal, hence we are having the duty under the statute to award just compensation to the claimants. Therefore, we have to consider whether learned Claims Tribunal has awarded compensation on all heads for which the claimants are entitled by applying correct deduction and multiplier.

22. Profession of NA4 / Respondent-4 is Doctor, which has not been disputed, hence he cannot be said to be dependent upon the deceased on

the date of accident. Hence, as per the Second Schedule, deduction would be 1/3rd in view of the law laid down by Hon'ble Supreme Court in case of **Sarla Verma (Smt) and Others Vs Delhi Transport Corporation and Another** reported in (2009) 6 Supreme Court Cases 121, where application of deduction of 1/3rd is prescribed where dependants are up to three and deceased is a married person.

23. For the foregoing reasons, we find it appropriate to re-compute the amount of compensation taking into consideration the annual income of the deceased as Rs.5,55,726/- which is as under:

a) The gross total income per annum is Rs.5,55,726/-.

b) The deceased on the date of accident has been held to be 44 years of age hence, there will be addition of 25% of his yearly income towards future prospects. Now total yearly income of the deceased comes to Rs.6,94,658/- (rounded off) {555726 + (555726 x 25/100)}.

c) After deducting the Income Tax prevailing during that period (Income up to Rs.1,60,000/- to be non-taxable; 10% of the income above Rs.1,60,000/- to 5,00,000/-; 20% on the income above Rs.5,00,000/- up to Rs.8,00,000/-), net income of the deceased comes to **Rs.6,37,726/-** [(694658─160000=534658)(534658 ─ 500000= 34658) (500000x10/100=50000)(34658x20/100=6932) (Total Tax-50000+6932 = 56932) (694658 ─ 56932)]

d) After deducting 1/3rd towards personal and living expenses, yearly loss of dependency comes to Rs.4,25,151/- {637726 ─ (637726 x 1/3)}.

e) Upon applying multiplier of 15 as per the law laid down by Hon'ble Supreme Court in case of **Sarla Verma** (supra), total loss of dependency comes to Rs.63,77,265/- (425151 x 15).

f) Apart from above total loss of dependency, claimants are also entitled for Rs.40,000/- towards spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.40,000/- towards filial consortium, 15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

g) Now the claimants are entitled for a total sum of compensation of Rs.65,27,265/-

24. The total amount of compensation of **Rs.65,27,265/-** shall carry interest @ 7% from the date of filing of the claim application till its realization.

25. Award of interest is envisaged under Section 171 of the Motor Vehicle Act, 1988 in which there is no provision of awarding default interest but only mentions about award of simple interest. For the foregoing reason, default interest awarded by the Tribunal @ 12% is not sustainable, hence it is hereby set aside.

26. In view of above, appeal is allowed in part and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.C.C. No. 81 of 2021

- The New India Assurance Company Limited Parkha Bhawan Station Road, Durg, Through Authorised Signatory For Divisional Office, 460500, The New India Assurance Company Limited, Divisional Office, Opposite Rajiv Plaza, Old Bus Stand, Bilaspur (C.G.)

---- Applicant(Insurer/N.A.-3)

Versus

1. Smt. Hemlata Dixit, aged about 39 years, Widow of Late Dr. Awdhesh Dixit,
2. Minor Shivam Dixit, aged about 10 years, Through Next Frient Mother Smt. Hemlata Dixit, Both R/o C-108, Guru Ghasidas Society, New Rajendra Nagar, Raipur (C.G.) **(Claimants)**
3. Dhani Ram Sahu, aged about 46 years, S/o Harish Chandra, R/o Charbhata, Gundardehi, District Durg (C.G.)

   (Driver of the Offending Truck No. C.G.09 B-0389).
4. Shayer Bai, Wd/o Bheekam Chandra Jain, R/o Kalangpur, Tehsil Gundardehi, District Durg (C.G.), District Durg, Chhattisgarh. **(Owner of the Offending Truck No. C.G.09 B-0389).**
5. Dr. Satya Prakash Dixit, aged 69 years, S/o Late Ramnath Dixit,
6. Smt. Snehlata Dixit, aged 64 years, W/o Dr. Satya Prakash Dixit, Respondent No's 5 & 6 both R/o C-108 , Guru Ghasidas Society, New Rajendra Nagar, District Raipur, Chhattisgarh.

----Respondents

For Appellant	:	Mr. B.N. Nande, Advocate.
For Respondents No. 1, 2, 5 & 6	:	Mr. Manoj Paranje, Advocat
For Respondents No. 3 & 4	:	None appears.

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
24.02.2021

1. This MCC has been filed seeking correction / modification of the order dated 06.10.2020 passed in M.A. (C) No. 1363 of 2014.

2. Shri B.N. Nande, learned counsel for the applicant submits that MAC No. 1363 of 2014 is filed by the applicant/Insurer challenging the impugned award passed by the Chief Motor Accidents Claims Tribunal, Raipur (henceforth, 'Claims Tribunal') in Claim Case No. 01/2012 on the ground of quantum of compensation, which was allowed by this Court vide impugned order dated 06.10.2020. He further submits that due to some inadvertent typographical error, multiplier of 15 has been applied for the purpose of computation of compensation, even after recording the age of the deceased to be 44 years, in fact in view of the dictum of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and another**, reported in **(2009) 6 SCC 121**, the appropriate multiplier would be 14 and thereby the calculation mistake has been crept in calculating the amount of compensation.

3. Mr. Manoj Paranjpe, learned counsel for respondents No. 1,2, 5 & 6/claimants submits that amount of compensation awarded by the Claims Tribunal has been reduced upon considering the grounds raised in the appeal. There is substantial reduction of the amount of compensation awarded by the Claims Tribunal. Hence, by reducing the multiplier will cause prejudice to the respondents No. 1,2,5 & 6/claimants.

4. We have heard learned counsel for the respective parties.

5. While passing the impugned order, we have referred the ruling of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) (supra),** for the purpose of applying the multiplier, which clearly shows that due to inadvertent typographical error,

multiplier of 15 has been applied and accordingly the amount of compensation is calculated, this is only a typographical error leading to the mistake in calculation of the amount of compensation, which is required to be corrected.

6. In paragraph 23 (e) of the impugned order, multiplier of 15 has been applied to the yearly loss of dependency of Rs.4,25,151/-. We hold that appropriate multiplier would be 14 and accordingly the amount of compensation is recomputed as under :-

> "Upon applying multiplier of 14 with yearly loss of dependency of Rs.4,25,151/-, total loss of dependency comes to Rs. 59,52,114/- (425151 x 14).

7. Consequently, paragraph 23 (g) is to be read as under : -

Now, claimants are entitled for a total compensation of Rs. 61,02,114/-. Thus, total amount of compensation as mentioned in paragraph 24 of the impugned order shall be corrected and read as Rs.61,02,114/-. The said amount shall carry interest @ 7% per annum from the date of filing of claim application till its realisation.

8. The MCC is allowed to the extent indicated hereinabove.

9. Copy of this order shall be made part of the order dated 06.10.2020 passed in M.A. (C) No. 1363 / 2014.

Sd/-	Sd/-
(PR Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Dubey/-