NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 789 of 2014

1. Bhanubai W/o Thaneshwar Aged About 43 Years.
2. Vijay Kumar S/o Thaneshwar Sahu Aged About 18 Years.
3. Sonarin Bai W/o Asharam Sahu Aged About 70 Years.
   All are R/o. Village- Hathod, P.S. & Tah. Balod, Distt. Balod C.G.

---- Appellant/Claimants

Versus

1. Rajendra Kumar Pandey S/o Shankar Prasad Pandey Aged About 28 Years R/o. Village- Vicharpur, P. S. Khairagarh, Distt. Rajnandgaon C.G.
2. Bhupinder Kour W/o Harwinder Kour, R/o. Sahdev Nagar, District : Rajnandgaon, Chhattisgarh.
3. Reliance General Insu. Co. Ltd. Thru- Divisional Manager, Shop No. 412-413, 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, District : Raipur, Chhattisgarh.

--- Respondents

For Appellants	:	Mr. Samir Singh, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Mr. N. K. Thakur, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J
Judgment on Board

Per Parth Prateem Sahu, J

15/09/2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned II Additional Motor Accident Claims Tribunal, Balod vide award dated 01.02.2014 passed in Claim Case No.72/2013.

2. Facts relevant for disposal of this appeal are that on 20.06.2012, son of first appellant (Himendra Kumar @ Pappy Yadav) was going towards Gokul Nagar road Rajnandgaon on his Hero Honda motorcycle bearing registration No.CG12/AC/5166, (for short 'the motorcycle') at that relevant point of time, one Truck (Dumper) bearing registration No.CG07-ZC-2805, (for short, 'offending vehicle'), driven by respondent No.1-Rajendra

Kumar Pandey dashed against the motorcycle as a result of which, Himendra Kumar suffered grievous injuries over his person and succumbed to the injuries on spot. Matter was reported to Police Station – Basantpur, Rajnandgaon based on which Crime No.205/12 was registered against driver of offending vehicle.

3. Claimants, who are mother, grandmother and younger brother of deceased -Himendra Kumar, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.20,42,000/- on the ground that on the date of accident, deceased was working with Tata Indicom Company for the last two years and thereby earning Rs.3,500/- per month. He was the only bread winner of their family and on account of his untimely death, they have suffered loss of income.

4. Non-applicant Nos.1 & 2, driver and owner of offending vehicle, have not filed their reply to application.

5. Non-applicant No.3/Insurance Company filed reply to application pleading therein that amount of compensation claimed is highly exaggerated. It was pleaded that as the accident is outcome of head-on collusion between the motorcycle and offending vehicle, it was the case of contributory negligence. It was further pleaded that there was breach of condition of Insurance Policy as on the date of accident, driver of offending vehicle was not possessing valid and effective driving license. There was no valid permit or fitness certificate of the vehicle.

6. On appreciation of pleadings and evidence placed on record by respective parties, the Tribunal allowed claim application in part, awarded a sum of Rs.1,90,000/- as compensation in a death case, alongwith interest @ 6% p.a and fastened liability upon Insurance Company by

holding that late Himendra Kumar died in the accident occurred due to rash & negligent driving of offending vehicle by non-applicant No.1. Further the Tribunal arrived at finding that Insurance Company failed to prove contributory negligence on the part of deceased.

7. Learned counsel for the claimants/appellants submits that the Tribunal committed error in assessing income of deceased only as Rs.3,000/- per month on notional basis, ignoring that claimants have very specifically stated in their pleadings that on the date of accident, deceased was 24 years of age and working with Tata Indicom Company, thereby earning Rs.3500/- per month. He further submits that the Tribunal erred in not adding any amount towards future prospects and the amount awarded towards other conventional heads are also on lower side. Though the deceased was considered to be 24 years of age on the date of accident, the Tribunal has applied multiplier of 10, instead of 18 as held by the Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and Anr**[1]. On the aforesaid grounds, he prays that the amount of compensation awarded to claimants be enhanced suitably.

8. Per contra, learned counsel for respondent No.3/Insurance Company submits that the Tribunal after considering the materials available on record, particularly the facts that the claimants have not been able to prove income of deceased by placing cogent and reliable piece of documentary evidence, has rightly assessed monthly income of deceased as Rs.3,000/- on notional basis. He further submits that in view of the law laid down by the Hon'ble Supreme Court in the case of

1 2009 (6) SCC 121

Municipal Corporation of Greater Bombay v Laxman Iyer & Anr[2] the Tribunal has applied multiplier of 10, which cannot be said to be erroneous. In view of above, the Tribunal has awarded just and proper amount of compensation, which does not call for any interference.

9. We have heard learned counsel for the parties and also perused the record.

10. Accident and motor-accidental death of deceased is not in dispute. Insurance of vehicle is also not in dispute. Respondent No.3/Insurance Company has not challenged the impugned award on any of the ground.

11. So for as first argument raised by learned counsel for appellants that the Tribunal erred in fixing monthly income of deceased at Rs.3000/- per month on notional basis is concerned, claimants have very specifically pleaded in their pleadings and also stated in their evidence, that on the date of accident, deceased was working with Tata Indicom Company and thereby earning Rs.3500/- per month. Looking to the price index, rate of inflation and wage rate prevailing in Distt- Balod on the date of accident, income of deceased pleaded by the claimants in their pleadings and evidence cannot be said to be on higher side, therefore, we fix the monthly income of deceased at Rs.3500/- instead of Rs.3000/- per month as assessed by the Tribunal.

12. Coming to the next argument advanced by learned counsel for appellants that the Tribunal erred in not awarding any amount towards future prospects. The Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi**[3] has held that in case the

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2 2003 (8) SCC 731
3 (2017) 16 SCC 680

deceased, victim of motor accident, was not in permanent employment and below the age of 40 years, an addition of 40% of established income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads thus :-

> "59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

13. Indisputably, in case at hand, on the date of accident, deceased was aged about 24 years, which was also accepted by the Tribunal, and was not in permanent employment, therefore, this Court is of the considered opinion that appellants/claimants are entitled for an addition of 40% of established income of deceased towards future prospect.

14. The Tribunal has awarded a total sum of Rs.10,000/- under other conventional heads, which, in the opinion of this Court, is on lower side and required to be enhanced in view of the decision of Supreme Court in the cases of **Pranay Sethi** (supra) and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram**[4].

15. So for as the argument advanced by learned counsel for appellants that the Tribunal committed an error in applying multiplier of 10 on the basis of age of parent of deceased is concerned, issue of application of multiplier in cases where the deceased was bachelor, came for

4 2018 18 SCC 130

consideration before Hon'ble Supreme Court in the matter of **Sube Singh and Others v. Shyam Singh (dead) and Others**[5], 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 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."

16. In view of the above authoritative pronouncement of the Hon'ble Apex Court, we are of the view that the Tribunal committed error in applying multiplier of 10 considering the age of parent of deceased, and the same is hereby set aside. On the date of accident, deceased was aged about 24 years which was accepted by the Tribunal, therefore, correct multiplier to be applied in the instant case will be '18' instead of '10' as applied by the Tribunal.

17. For the foregoing reasons, we propose to recompute the amount of compensation awarded by the Tribunal.

18. Income of deceased is taken as Rs.3,500/- per month as held above, and by adding 40% of income towards future prospects, which comes to

5 2018 (3) SCJ 269

Rs.1,400/- (40% of 3500). Total monthly income of deceased is assessed at Rs.4,900/- (3500+1400) and accordingly yearly income of deceased comes to Rs.58,800/- (4900X12). As on the date of accident, deceased was bachelor, 50% amount is to be deducted towards his personal and living expenses. After deducting 50%, annual loss of dependency comes to Rs.29400/- (58800 – ½). By applying multiplier of 18 total loss of dependency will come to Rs.5,29,200/- (29400 X18). Apart from this, claimants are also entitled for a sum of Rs.40,000/- towards loss of filial consortium, Rs,15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Now appellants/claimants will be entitled for a total sum of **Rs.5,99,200/-** instead **of Rs.1,90,000/-** as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact. Respondent No.3/Insurance Company is directed to deposit the entire amount of compensation within period of 2 months.

19. In the result, appeal is allowed in part and the impugned award stands modified to the extent as indicated herein-above.

Sd/-	**Sd/-**
(P.R. Ramamchandra Menon) **Chief Justice**	**(Parth Prateem Sahu)** **Judge**

Jamal/-