AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1517 of 2015

1. Ganesh Ram, S/o Shri Duklha, Aged About 40 Years
2. Smt. Shanti Bai, W/o Ganesh Ram, Aged About 37 Years

   Both R/o Village Ameri, Thana Suhela, District Balodabazar Chhattisgarh......Claimants,

---- Appellants/claimants

Versus

1. Amitabh Bandhe @ Amitabh Bachchan S/o Shri Shiv Kumar Bandhe, Aged About 22 Years R/o Village Ameri, Thana Suhela, District Balodabazar Chhattisgarh........Driver
2. Shiv Kumar Bandhe, S/o Lenu Ram Bandhe, Aged About 45 Years R/o Village Ameri, Thana Suhela, District Balodabazar Chhattisgarh......Owner
3. Chola Mandalam, M. S. General Insurance Company Limited Through Branch Manager, R/o Shimran Tower, Near Chhoti Rail Line Devendra Nagar Raipur Chhattisgarh.....Insurer

---- Respondents/Non-Applicants

For Appellants	:	Shri AL Singroul, Advocate
For Respondent-3/Insurance Company	:	Shri BL Sahu, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

03.11.2020

1. This is Claimants' appeal under section 173 of Motor Vehicle Act, 1988 seeking enhancement of compensation awarded by the 7th Additional Motor Accidents Claims Tribunal, Raipur (For short, 'Claims Tribunal') in Claim Case No.576 of 2014 vide impugned award dated 30.06.2015, whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 in part and awarded a total sum of Rs.1,12,500/- as compensation in a child death case.

2. Facts relevant for disposal of this appeal are that on 01.07.2014 NA1 was driving his Tractor bearing No.CG 04 DT 8240 (hereafter, referred to as 'offending vehicle') and going to one agriculture field to

another and applicant/claimant-1 was trying to board his son Manoj Kumar on the offending vehicle. While so, NA1 drove the vehicle rashly and negligently, in which Manoj Kumar suffered injuries with the ploughing instrument attached to the offending vehicle. While taking him to the hospital at Bhatapara, he succumbed to the injuries. Accident was reported to the concerned Police Station, based upon which, Crime was registered against NA1.

3. Appellants/ claimants who are parents of deceased Manoj Kumar filed application under Section 166 of the Act of 1988 pleading therein that the deceased was able bodied boy, aged about 8 years and studying in Class-II. He could have earned Rs.3,000/- per month in future. They claimed Rs.16,50,000/- as compensation.

4. NA1 and 2, driver and owner of offending vehicle submitted reply to the claim application, while denying the pleading made therein, further pleaded that offending vehicle was standing on the spot of accident; deceased himself was trying to board the vehicle and met with an accident. Application filed is based on fabricated grounds. On the date of accident, offending vehicle was insured with NA3/Insurance Company and the liability if any to satisfy the amount of compensation would be upon NA3.

5. NA3/Insurance Company denied the pleadings made in the claim application and further pleaded that deceased died on account of his own negligence. NA1, driver of offending vehicle was not possessed with valid

and effective driving license thus there was breach of Policy conditions. In alternate, took plea of contributory negligence on the part of NA1.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that deceased died due to rash and negligent driving of offending vehicle; deceased suffered injuries with the ploughing instrument attached to the vehicle and died; contributory negligence was not found to be proved, there was breach of policy conditions. While exonerating the Insurance Company from its liability to satisfy the amount of compensation, awarded Rs.1,12,500/- as compensation and fastened liability upon NA1 and NA2, driver and owner of offending vehicle.

7. Shri AL Singraul, learned counsel for the appellants submits that learned Claims Tribunal erred in awarding very meagre amount of compensation, overlooking the fact that the deceased on the date of accident, was only a child of 8 years. He submits that Hon'ble Supreme Court in case of **Kishan Gopal Vs Lala and others** reported in (2014) 1 SCC 244 has awarded Rs.5,00,000/- compensation in a child death case. He further submits that learned Claims Tribunal has assessed income of the deceased as Rs.15,000/- per annum and after deducting 1/3rd, calculated the amount of compensation by applying multiplier of 10, which in the facts and circumstances of the case is not sustainable. He further submits that multiplier to be applied considering the age of child and not the age of parents. He further submits that learned Claims Tribunal awarded meagre amount of compensation on other conventional heads, ie Rs.5,000/- for funeral expenses, Rs.5,000/- for loss of love and affection

and Rs.2,500/- towards loss of estate. He next contended that the Tribunal exonerated Insurance Company while recording a finding that on the date of accident NA1 was not possessed with valid and effective driving license. He submits that when Ex.D1 Insurance Policy is admitted by the Insurance Company, then, merely on the ground of no license with driver of offending vehicle, learned Claims Tribunal ought to have issued a direction of pay and recover as held by Hon'ble Supreme Court in cases of **Pappu and others Vs Vinod Kumar Lamba and another** reported in (2018) 3 SCC 208 and **Shamanna and another Vs Divisional Manager, Oriental Insurance Company Limited and others** (2018) 9 SCC 650.

8. Per contra, Shri BL Sahu, learned counsel for respondents 1 and 2, driver and owner of offending vehicle submits that learned Claims Tribunal taking into consideration the age of child as only 8 years on the date of accident, has rightly awarded just amount of compensation, which does not call for any interference. He further contended that there cannot be any income of a child studying in Class-II and aged about only 8 years, the Tribunal could not have applied the multiplier formula for assessing the amount of compensation in these facts and circumstances of the case. It is lastly contended that Insurance Policy issued by the Insurance Company was valid on the date of accident and liability to satisfy the amount of compensation ought to have been fastened upon the Insurance Company.

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

10. So far as the submissions made by learned counsel for the appellants with regard to enhancement of compensation, as per pleadings made in the claim application, the appellants, who are parents of deceased themselves have pleaded age of the deceased as only 08 years on the date of accident.

11. Now, the question arises before this Court is whether learned Claims Tribunal could have calculated the amount of compensation by applying the formula of multiplier for the purpose of calculating the compensation against death of a child, aged about 8 years.

12. Hon'ble Supreme Court in case of **New India Assurance Company Limited Vs Satender and others** reported in (2006) 13 SCC 60 has held thus:

> "In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."

13. The case law relied upon by learned counsel for the appellants in **Kishan Gopal** (supra) case is where Honble Supreme Court has considered the quantum of amount of compensation in a death case of a child, aged about 10 years. Hon'ble Supreme Court while considering the claim of parents/appellants therein, in paragraph 38 has considered that

the deceased child was assisting the appellants in their agriculture occupation. In this case, Hon'ble Supreme Court relied upon the case of **Lata Wadhwa Vs State of Bihar** (2001) 8 SCC 197 in its paragraphs-36 and 37.

14. In the case at hand, deceased boy was a school going child, aged about 8 years, studying in Class-II. There is no pleading and evidence brought on record by the claimants regarding his earning or help.

15. Hon'ble Supreme Court has accepted the law enunciated by it in case of **Lata Wadhwa** (supra) for the purpose of calculating the amount of compensation for the child falling between the group of 5-10 years and 10-15 years and it is held that in case of death of a child between 5-10 years, amount of compensation would be 1.5 lakhs and Rs.50,000/- for other conventional heads, making total compensation as Rs.2,00,000/-. Related paras of case law of **Kishan Gopal** (supra) are reproduced here below for ready reference:

> "36. After noting the submission made on behalf of TISCO in Lata Wadhwa Case that the compensation determined for the children of all age group could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs. 50,000 should be added and thus total amount in each case would be Rs. 2 lakhs.

> 37. Further, in Lata Wadhwa Case it was observed that insofar as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000 p.a. appears to be on the lower side and held that the contribution of such children should be Rs. 24,000 p.a.
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> 38. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa Case with all four is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years old, who was assisting the appellants in their agriculture occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard."

16. Hon'ble Supreme Court in case of **Lata Wadhwa** (supra) decided by a three judges Bench, has held thus:

> "11. ……... Loss of a child to the parents is irrecoupable, and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well-placed officials of Tata Iron and Steel Company, and on considering the submission of Mr. Nariman, we would direct that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be added Rs. 1.5 lakhs, to which the conventional figure of Rs. 50,000 should be added and thus the total amount in each case would be Rs. 2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. TISCO itself has a tradition that every employee can get one of his children employed in the Company. …............"

17. Hon'ble Supreme Court again in case of **Puttamma and others Vs KL Narayana Reddy and another** reported in (2013) 15 SCC 45. The award of just compensation in death case of a child and held thus:

> "58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific directions to the Central Government through the Secretary, Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs.1,00,000 (Ruees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs.1,50,000 (Rupees one lakh and fifty thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act."

18. Taking into consideration the aforementioned case laws laid down by Hon'ble supreme Court and considering the facts of the case at hand, where the deceased is a child aged about 8 years, studying in Class-2, definitely, parents would have an expectation from their child for their future life.

19. In the aforementioned facts and circumstances of the case, and taking support of laws laid down by Hon'ble Supreme Court in above cited cases of **Lata Wadhwa, Satender, Kishan Gopal and Puttamma**, I find it

appropriate ot award Rs.1,50,000/- as lum-psum compensation towards death of a child.

20. I find it fit and proper to award Rs.40,000/- towards loss of filial consortium, Rs.15,000/- for estate and Rs.15,000/- for funeral expenses, which makes the total compensation to be awarded as **Rs.2,20,000/-**.

21. Aforementioned amount of compensation shall carry 6% interest from the date of filing of claim application till its realisation.

22. Other conditions imposed by learned claims Tribunal shall remain intact.

23. Now, coming to Second submission with regarding direction to be issued against NA3, Insurance Company is concerned, to pay the amount of compensation first and thereafter, to recover the same from respondents-1 and 2, driver and owner of offending vehicle, law in this regard is well settled now by Hon'ble Supreme Court in cases of **Pappu**(supra) and **Shamanna** (supra). In the case at hand, there is no specific proof that the deceased was travelling on offending vehicle, hence, the direction issued by Hon'ble Supreme Court to secure interest of claimant support of above case can be taken.

24. In this case also Insurance Policy issued by respondent-3 is not in dispute. NAW-3/1 Abhishek Choubey, Deputy Manager of the Insurance Company in his evidence accepted and admitted the Insurance of offending vehicle for a period of from 28.01.2014 to 27.01.2015. The accident took place on 01.07.2014, ie during the period of insurance

policy. Exoneration of Insurance Company by learned Claims Tribunal is only on the ground of no license with NA1, driver of offending vehicle on the date of accident.

25. In view of aforementioned direction issued by Hon'ble Supreme Court to the Insurance Company to first pay and then to recover from Owner of the offending vehicle, I find it appropriate to direct respondent-3 /Insurance Company to first deposit entire amount of compensation before learned Claims Tribunal and thereafter, to recover the same from NA1 and 2 in accordance with law.

26. For the foregoing reasons, appeal is allowed in part and the amount awarded is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

padma