NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No.919 of 2014

1. Serofeena Ekka W/o Manuel @ Aimanuel Aged About 60 Years, Caste-Uraon.
2. Neelprabha Ekka W/o Late Alver Ekka Aged About 34 Years.
3. Minor Ku. Anjitam D/o Late Alver Ekka Aged About 12 Years.
4. Minor Ku. Ankita D/o Late Alver Ekka Aged About 11 Years.

   Appellant Nos.3 & 4 are Minor Through their natural guardian, Mother Smt. Neelprabha EkkaW/o Late Alver Ekka.

   All are R/o Odhka, P.S. and Tah. Bagicha, Distt. Jashpur, Civil & Revenue Distt. Jashpur, C.G.

---- Appellants/Claimants

Versus

1. Vinod Kumar Jain S/o Hanuman Prasad Jain Aged About 43 Years, Occupation-Business, R/o Near Bus Stand, Jashpur, Tah and Distt. Jashpur C.G.
2. Kunwar Ekka S/o Josef Ekka Aged About 30 Years, Occupation -Driver, R/o Teekaitganj, Tah. Jashpur, Distt. Jashpur C.G.
3. The Oriental Insu. Co. Ltd, Local Branch Office- Raigarh, Distt. Raigarh, Civil & Revenue District-Raigarh, Chhattisgarh.

--- Respondents

For Appellants	:	Mr. A K Prasad, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Ms. Chitra Shrivastava, Advocate.

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

Order on Board

Per Parth Prateem Sahu, J
18/09/2020

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 Motor Accident Claims Tribunal, Jashpur, Distt. Jashpur, (CG) (for short, 'the Tribunal) vide award dated 23.08.2012 passed in Claim Case No.49/2010.

2. Facts relevant for disposal of this appeal are that on 16.11.2005, deceased- Alver Ekka along with Sohan, Mahendra & Ramdhani went to

Odhkalta Stones Mines on Truck bearing registration No.CG15-A-1104, (for short, 'offending truck') as Coolie (Loader) for loading stone ballast. On the way, wheels of truck got stuck into mud, therefore, deceased alongwith other labourers was assisting in extracting its wheels from mud and in that process, non-applicant No.2 -driver of offending truck, carelessly reversed the truck as a result of which, deceased came under the wheels of offending truck and suffered grievous injuries. He was taken to hospital, where during the course of treatment he died.

3. Claimants, who are mother, widow and children of deceased- Alver Ekka, filed an application under Section 166 of the Act of 1988 before the Tribunal seeking total compensation of Rs.26,21,500/- on the ground that on the date of accident, deceased- Alver Ekka was engaged in the work of loading stone ballast, he used to load four trips every day at the rate of 175/- per trip and earn Rs.600/- per day.

4. Non-applicant No.1/owner of offending vehicle submitted reply to claim application, denying the entire pleadings made therein. It was pleaded that on the date of accident, he was not the registered owner of offending truck. On the date of accident, offending truck was insured with respondent No.3/Insurance Company and Non-applicant No.2 -driver was having valid and effective driving license. Since offending truck was not plied in breach of conditions of Insurance Policy, liability to make payment of amount of compensation would be of insurance company.

5. Respondent No.3/Insurance Company filed its reply and denied the pleadings made in application. It was pleaded that offending truck was plied in breach of condition of insurance policy as at the time of accident, non-applicant No.2 -driver was not possessed with a valid and effective driving license. It

was also pleaded that accident took place on account of negligence of non-applicant No.2 and deceased themselves, Insurance Company is not liable to indemnify the insured.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that due to rash and negligent driving by Non-applicant no.2, deceased came under the wheel of offending truck and died. The Tribunal by assessing income of deceased at Rs.3,000/- per month, allowed claim application in part and awarded total compensation of Rs.3,99,500/- along with interest at the rate of 6% p.a and fastened liability upon non-applicants jointly and severally to satisfy the amount of compensation.

7. Learned counsel for the appellants submits that the Tribunal erred in assessing income of deceased as Rs.3,000/- per month, ignoring the pleadings and evidence placed on record by claimants with regard to income of deceased that on the date of accident, deceased was earning Rs.600/- per day by performing the work of loading stones ballast in truck. He further submits that the Tribunal has also not considered that on the date of accident, minimum wages could not have been less than 200/- per day for Coolie (Loader). The Tribunal erred in not awarding any amount towards future prospects and deducting 1/3rd instead of ¼th towards personal and living expenses of deceased, ignoring total number of claimants to be in 4. The amount awarded towards other conventional heads to the tune of Rs.20,000/- is also on lower side.

8. Per contra, learned counsel for respondent No.3/Insurance Company opposes the submission made by the learned counsel for the appellants and submits that looking to the date of accident and the fact that claimants failed to prove income of deceased by placing cogent and reliable piece of evidence,

has rightly assessed monthly income of deceased as Rs.3,000/-. She further contended that the Tribunal has wrongly considered age of deceased as 35 years without any sufficient prove, ignoring the fact that age of deceased mentioned in post-mortum report as 36 years. Looking to age of deceased as 36 years, multiplier of '15' would be applicable and not '16' as applied by Tribunal.

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

10. So for as first argument raised by learned counsel for appellants that the Tribunal has not assessed income of deceased correctly is concerned, claimants have pleaded in their pleadings that on the date of accident, deceased- Alver Ekka was earning Rs.600/- per day from loading ballast stones in truck. However, they failed to produce any documentary evidence on record in support of their pleadings with regard to income of deceased and in absence thereof, the Tribunal was justified in fixing monthly income of deceased on notional basis. At the same time, the Tribunal has erred in assessing income of deceased at Rs.3,000/ per month. Looking to nature of work of deceased, as pleaded before the Tribunal and keeping in mind the price index and considering wage rate, we find it appropriate to asses income of deceased at Rs.3,500/- per month on notional basis, presuming him to be engaged as a 'manual labour'. Accordingly, we fix monthly income of deceased as Rs.3,500/-.

11. Coming to the next argument advanced by the learned counsel for the appellants/claimants that the Tribunal erred in not awarding any amount towards future prospects is concerned, the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi**[1] has held that in case the deceased or victim of the motor accident, was not

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[1] (2017) 16 SCC 680

in a permanent employment and below the age of 40 years, an addition of 40% of established income 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."

12. Indisputably, in case at hand, on the date of accident, deceased was below the age of 40 years, which was also accepted by the Tribunal, 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.

13. Perusal of record would show that claimants have not produced any documentary evidence on record with respect to age of deceased, the Tribunal only on the basis of pleadings made by the claimants has accepted age of deceased as 35 years, whereas in Ex.A-3 post-mortem report age of deceased is mentioned as 36 years. Thus, in absence of any specific documentary evidence with regard to the age of deceased, we find it appropriate to accept age of deceased, as mentioned in application and post-mortem report ie 36 years.

14. Perusal of impugned award reveals that the Tribunal had deducted 1/3 from income of deceased towards his personal and living expenses. In the case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and**

Anr[2], it was held by Hon'ble Supreme Court that where number of dependent is 4 to 6, 1/4 is to be deducted towards personal and living expenses from income of deceased. In case at hand, total numbers of dependents are 4, and being so deduction towards personal and living expenses of deceased should be ¼th and not 1/3rd as applied by the Tribunal. Accordingly, we hold that ¼ is to be deducted from income of deceased towards his personal and living expenses.

15. Perusal of impugned award reveals that multiplier of 16 as applied by the Tribunal is incorrect in the given facts and circumstances of the case. In view of the age of deceased, which was 36 years as per post-mortem report, the Tribunal should have applied multiplier of 15, as has been held by the Hon'ble Supreme Court in the matter of **Sarla Verma's case** (supra). Therefore, proper multiplier to be applied for assessing loss of dependency should be 15 and not 16 as applied by the Tribunal.

16. The Tribunal has awarded a total sum of Rs.20,000/- under other conventional heads, which in the opinion of this Court is on lower side and the same is 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[3]**.

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. By adding 40% of income towards future prospects, total monthly income of deceased comes to Rs.4,900/- (3500 + 40% of 3500) and accordingly yearly income of deceased comes to Rs.58,800/- (4900X12). After deducting ¼ towards personal & living expenses from income of deceased i.e Rs.14,700/- (1/4 of 58800), yearly loss

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[2] (2009) 6 SCC 121

[3] 2018 18 SCC 130

of dependency would come to Rs.44,100/- (58800-14700). By applying multiplier of 15 to yearly loss of dependency, total loss of dependency will come to Rs.6,61,500/- (44100X15). Apart from this, claimants are also entitled for a sum of Rs.40,000/- towards loss of spousal consortium, Rs. 40,000/- towards loss of parental consortium, Rs.40,000/- towards loss of filial consortium, Rs,15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate and also Rs.1500/- towards transportation of body of deceased from hospital to their residence. Now appellants/claimants will be entitled for a total sum of **Rs.8,13,000/-** instead **of Rs.3,99,500/-** 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 except interest shall remain intact.

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

Sd/-

(P. R. Ramamchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-