NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 476 of 2013

- Smt. Kalawati Gond W/o Late Chherka Singh Gond; aged about 45 years, R/o Village- Thangaon; Police Station- Bijuri District Anuppur M.P.

------Appellant

VERSUS

1. Bhaiya Lal Dewangan S/o Shobharam Dewangan R/o Village- Basapara, Police Station- Soorajpur District Ambikapur C.G. **--------Driver**
2. Brijesh Kumar Yadaw S/o Nandlal Yadaw through Sharda Auto C.R.O. Kemp Khongapani Bhanpur Raipur P.S. Raipur, Tahsil and District Raipur C.G. **-----Owner**
3. Reliance General Insurance Company Limited through Branch Manager Branch Office Lalganga Shopping Mall Complex G.E. Road Pandari Raipur Police Station Raipur Tahsil and District Raipur C.G. **-------Insurer**

-------**Respondents**

For Appellant	:	Mr. Anand Kesharwani, Advocate.
For Respondent No. 3	:	Mr. Deepak Gupta, Advocate on behalf of Mr. S.S. Rajput, Advocate

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Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge
Judgment on Board

Per Parth Prateem Sahu, J.

22/05/2020

1. Challenge in this appeal is to the impugned award dated 05-10-2012 passed in Claim Case No. 27/2012 by learned 6th Upper Motor Accident Claims Tribunal, Bilaspur C.G., whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 1,95,000/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are, that on 28-01-2011 when Lakhan Singh (deceased) was traveling on a Truck bearing Registration No. CG16A 1523 (hereinafter referred to as 'offending vehicle') as supporting helper. On the way, the offending vehicle was met with an accident and overturned. In the said accident, Lakhan Singh suffered grievous injuries over his person and succumbed to those injuries on spot. The incident was reported to concerned police station based on which crime bearing No. 10/11 was registered against

respondent 1/ non-applicant 1 Driver of the offending vehicle.

3. The appellant-claimant who is mother of the deceased filed claim application before the Claims Tribunal claiming Rs. 26,50,000/- as compensation.

4. Respondent 1/ non-applicant 1- driver of the offending vehicle submitted reply to the claim application and pleaded that due to mechanical failure of the vehicle, it met with an accident and not on account of rash and negligent driving. On the date of accident, offending vehicle was insured with Respondent 3/ non-applicant 3-Insurance Company, liability, if any, would be upon the Insurance Company for payment of amount of compensation.

5. Respondent 2/ non-applicant 2 owner of the offending vehicle has not submitted his reply and was proceeded *ex parte.*

6. The insurance company resisted the claim filed by the appellant on the ground that from the post mortem report, it is evident that the deceased was aged about 35 years, whereas, it has been wrongly pleaded in the claim application that the deceased was aged of 25 years, on the date of accident, Respondent 1/ non-applicant 1 was not possessing valid and effective driving licence to drive the vehicle, resulting into violation of conditions of insurance policy. The deceased was traveling as gratuitous passenger.

7. On appreciation of the pleadings and evidence placed on record by the respective parties, the Tribunal concluded that death of deceased took place on account of rash and negligent driving of driver of the offending vehicle, there is no violation of conditions of insurance policy and awarded a total sum of Rs. 1,95,000/- as compensation to be paid jointly and severally by the non-applicants/ respondents.

8. Learned counsel for the appellant submits that the Tribunal erred in applying the multiplier of 10 for calculating the loss of dependency taking into consideration the age of the claimant. He contended that multiplier is to be applied considering the age of the deceased and not of the claimant. He further submits that learned

Tribunal erred in holding the income of the deceased as Rs. 3,000/- per month ignoring the income as Rs. 4,000/- per month plus Rs. 50 daily allowance from the work of cleaner in the offending vehicle as pleaded in the claim application. He further submits that the learned Tribunal erred in awarding the amount towards other conventional head on lower side.

9. Per contra learned counsel appearing for Respondent 3-Insurance Company submits that there is no evidence or material to say that the age determined by the Tribunal is erroneous. He further submits that the Tribunal further considered that the claimant has not produced any cogent and reliable piece of evidence with regard to prove the income of the deceased and rightly assessed the income of the deceased on the notional basis. In view of the above, he submits that the award passed by the learned Claims Tribunal is just and proper and do not call for interference.

10. We have heard learned counsel for the respective parties and perused the record.

11. So far as the first ground raised by the learned counsel for the appellant about the multiplier applied by the Tribunal for calculating the amount of compensation, law in this regard is well settled by the Hon'ble Supreme Court. The Hon'ble Supreme Court recently in the matter of ***Sube Singh v. Shyam Singh*** reported in **(2018) 3 SCC 18,** after considering its earlier judgment on the point has held that the multiplier is to be applied considering the age of the deceased and not of the dependent. The relevant para of aforementioned judgment is reproduced below.

> "4. ...The legal position, however, is no more res integra. In *Munna Lal Jain, [(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. We may usefully refer to the exposition in paras 11 and 12 of the reported decision, which read thus: (*Munna Lal Jain case, SCC pp. 351-52)*
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> *"11.* The remaining question is only on

> multiplier. The High Court *(Munna Lal Jain v. Vipin Kumar Sharma, 2012 SCC OnLine Del 4540)* following *Santosh Devi,[Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421]* has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependents or that of the deceased, has been hanging fire for some time; but that has been given a quietus by another three-Judge Bench decision in *Reshma Kumari, [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65].* 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 dependents 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 case, SCC p. 88, para 36)*
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> '*36.* In *Sarla Verma, (2009) 6 SCC 121*, 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 case* 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 dependents. 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 point as we are in full agreement with the view in *Sarla Verma case.*'
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> 12. In *Sarla Verma case* at para 19 a two-Judge Bench dealt with this aspect in Step 2. To quote: (SCC p. 133)
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> *'19. … Step 2 (Ascertaining the multiplier)*
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> 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.' ”

12. In the case at hand, the claimant did not produce any evidence to prove the age of deceased, but for the documents of criminal case including post mortem report and its application Exh. P7. First page of Exh. P7 is an application by police to

Community Health Centre for conducting post mortem of the dead body of Lakhan Singh in which the age of the deceased is mentioned as 26 years. The Doctor in its post mortem report mentioned age of deceased as 35 years. As there is no other admissible piece of evidence proving age of the deceased produced by the claimant, it will be appropriate to take the age as recorded by Doctor who prepared post mortem report (Exh. P7), being expert. In post mortem report, age of deceased is recored as 35 years. In view of the above, we hold the age of deceased as 35 years for the purpose of calculating the amount of compensation. The application of multiplier by the Tribunal of 10 taking into consideration the age of dependent is set aside. The appropriate multiplier in case of death of 35 old person will be of 16 as held by the Apex Court in the case of ***Sarla Verma & others v. Delhi Transport Corp. & Anr*** reported in **(2009) 6 SCC 121.**

13. The second ground raised by the learned counsel for the appellant that the income of the deceased has been assessed by the learned Claims Tribunal is on lower side instead of Rs. 4,000 /- p.m. + Rs. 50/- daily allowance is concerned. With respect to the income of the deceased, the claimant has not placed on record any documentary evidence before the Tribunal except her oral statement. The income is liable to be proved by placing cogent and admissible piece of evidence before the Tribunal in which the claimant failed. However, the income of the deceased who is said to be employed as cleaner in the offending vehicle is to be taken on the basis of the notional income, taking into consideration the wage rate prevailing as well as the price index. Taking into consideration the date of accident i.e. 28-01-2011, we deem it proper to assess the income of the deceased taking into consideration the wage rate prevailing and treating the deceased as labour at that time as Rs. 4,000/-. Apart from the above there will be an addition of 40% of the established income of the deceased towards future prospects for calculating total monthly income, in view of the law laid down by the Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680**, in which the Supreme Court has held

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."

The Tribunal awarded only Rs. 15000/- in total on other conventional heads, which in view of the law laid down by the Hon'ble Supreme Court in case of **Pranay Sethi (supra)** and **Magma General Insurance Co. Ltd. v. Nanu Ram *alias* Chuhuru Ram and others** reported in **(2018) 18 SCC** 130 is on lower side.

14. For the above reasons, the impugned award requires reconsideration and recalculation which is calculated as under.

15. The income of the deceased assessed by this Court as Rs. 4,000/- p.m. i.e. Rs. 48,000/- per annum, by adding 40% of the established income total yearly income of the deceased will come to Rs. 67,200/- [Rs. 48,000+ 40% of 48,000]; as claimant is only mother, there will be a deduction of ½ of the amount towards personal and living expenses, after deducting ½ of the amount, the yearly loss of dependency comes to Rs. 33,600/-, considering the age of the deceased as 35 years, appropriate multiplier, in view of the law laid down by the Hon'ble Supreme Court in the matter of **<u>Sarla Verma</u> (supra)** will be 16; by applying the multiplier of 16, loss of dependency will come to Rs. 5,37,600/-(Rs. 33,600x16). Apart from the above the claimant will further be entitled for a sum Rs. 10,000/- towards pains and suffering, Rs. 40,000/- towards other filial consortium, an amount of Rs. 15,000/- towards funeral expenses, Rs. 15,000/- towards loss of estate. Now the claimant will be entitled for total amount of **Rs. 6,17,600/-** [Rs. 5,37,600+Rs.10,000+Rs.40,000+Rs.15,000+Rs.15,000] as compensation instead of Rs. 1,95,000/-. The said amount of compensation will carry interest @ 7% p.a. from the date of filing of the claim application till its realization.

Other conditions imposed by the learned Claims Tribunal will remain intact.

16. Consequently, the appeal is allowed in part and the impugned award is modified to the extent as indicated hereinabove.

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

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