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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 760 of 2013

(Arising out of order dated 23.04.2013 passed by the learned 2nd Additional Motor Accident Claims Tribunal, Rajnandgaon in Claim Case No.50/2012)

1. Chandraprakash Sharma S/o Late Shivshamkar Aged About 54 Years
2. Smt. Sharda Sharma W/o Chandraprakash Sharma Aged About 45 Years

   Both the Appellants are R/o Choukhadia Para Ward No. 34, City And Tah. Rajnandgaon, Civil & Revenue District : Rajnandgaon, Chhattisgarh
3. Smt. Meera Sharma W/o Ujjwal Sharma Aged About 24 Years R/o Choukhadia Para Ward No. 34, City And Tah. Rajnandgaon Civil & Revenue District : Rajnandgaon, Chhattisgarh

---- Appellants

Versus

1. M/s Ashok Brothers Through Proprietor Mr. Ashok Kumar Bafna, R/o Ramadhin Marg, City And Tah. Rajnandgaon, Civil & Revenue District : Rajnandgaon, Chhattisgarh
2. Branch Manager Bharti A.X.A. General Insurance Co. Ltd., First Floor, Chawala Complex, Devendra Nagar, Sairoad, Raipur, District : Raipur, Chhattisgarh
3. Jai Bhagwan Sharma S/o Not Known R/o Bt Road, Bongoli, Colkata W.B.
4. The Oriental Insurance Company Limited Through Branch Manager, Branch Office- Station Road, L.I.C. Office, Rajnandgaon, District : Rajnandgaon, Chhattisgarh

---- Respondents

MAC No. 758 of 2013

(Arising out of order dated 23.04.2013 passed by the learned 2nd Additional Motor Accident Claims Tribunal, Rajnandgaon in Claim Case No.154/2012)

1. Ashok Kumar @ Mohan Sharma S/o Kishan Sharma Aged About 52 Years
2. Smt. Maya Sharma W/o Ashok Kumar @ Mohan Sharma Aged About 46 Years
3. Kishan Sharma S/o Late Badriprasad Sharma Aged About 76 Years
4. Sourabh Sharma S/o Ashok Kumar @ Mohan Sharma Aged About 25 Years

   All the Appellants are R/o Vrindavan Colony, Qtr. No. 36, City And

Tah. Rajnandgaon, Civil & Revenue District : Rajnandgaon, Chhattisgarh

---- Appellants

Versus

1. M/s Ashok Brothers Through Proprietor Mr. Ashok Kumar Bafna, R/o Ramadhin Marg, City And Tah. Rajnandgaon, Civil & Revenue District : Rajnandgaon, Chhattisgarh
2. Branch Manager Bharti A.X.A. General Insurance Co. Ltd., First Floor, Chawala Complex, Devendra Nagar, Sairoad, Raipur, District : Raipur, Chhattisgarh
3. Jai Bhagwan Sharma S/o Not Known R/o BT Road, Bongoli, Kolkata W.B.,
4. The Oriental Insurance Company Limited Through Branch Manager, Branch Office- Station Road, L.I.C. Office, Rajnandgaon, District : Rajnandgaon, Chhattisgarh

---- Respondents

MAC No. 759 of 2013

(Arising out of order dated 23.04.2013 passed by the learned 2nd Additional Motor Accident Claims Tribunal, Rajnandgaon in Claim Case No.49/2012)

1. Ganesh Kumar Agrawal S/o Satyanarayan Agrawal Aged About 47 Years
2. Smt. Preeti Agrawal W/o Ganesh Kumar Agrawal Aged About 40 Years
3. Kumari Aabha Agrawal D/o Ganesh Kumar Agrawal Aged About 16 Years Minor, Thru- Natural Guardian Ganesh Kumar Agrawal,

All the Appellants are R/o Janta Colony, Lakholi Road, City And Tah. Rajnandgaon, Distt. Rajnandgaon C.G., District : Rajnandgaon, Chhattisgarh

---- Appellants

Versus

1. M/s Ashok Brothers Through Proprietor Mr. Ashok Kumar Bafna, R/o Ramadhin Marg, City And Tah. Rajnandgaon, Civil & Revenue District : Rajnandgaon, Chhattisgarh
2. Branch Manager Bharti A.X.A. General Insurance Co. Ltd., First Floor, Chawala Complex, Devendra Nagar, Sairoad, Raipur, District : Raipur, Chhattisgarh
3. Jai Bhagwan Sharma S/o Not Known R/o BT Road, Bongoli, Kolkata W.B.,
4. The Oriental Insurance Company Limited through- Branch Manager, Branch Office- Station Road, L.I.C. Office, Rajnandgaon, District : Rajnandgaon, Chhattisgarh

---- Respondents

For Appellants	:	Shri Rakesh Thakur, Advocate.
For Respondent No. 4	:	Shri T.K. Tiwari, Advocate.

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

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

18.06.2020

1. Claimants are the parents of the deceased. The appeal is for enhancement of the compensation awarded by the Claims Tribunal in respect of the death of three youths, which was sought to be compensated by filing claim under Section 163-A of the Motor Vehicles Act, 1988.

2. It is submitted on behalf of Shri Amrito Das, the learned counsel whose name is shown in the cause-list as appearing for the 2nd Respondent-Bharti A.X.A. General Insurance Company Limited that he has already relinquished the *Vakalat* and the matter has been informed to the Company. It is simultaneously added that, as per the intimation given to him, the Insurance Company has made alternate arrangements; but virtually there is nobody to represent the Insurer. I.A. No.02 of 2020 has been filed for removing the name of the learned counsel for the 2nd Respondent from the cause-list and the records.

3. Heard Shri Rakesh Thakur, the learned counsel for the Appellants and Shri T.K. Tiwari, the learned counsel appearing on behalf of the 4th Respondent.

4. The factual matrix reveals that on 26.11.2010, the deceased whose case is projected in MAC No.758 of 2013 was driving the Car bearing registration No.CG-07/LT/1431 with his friends, who are the deceased involved in other two appeals. When they reached the place of occurrence at National Highway No.6 at about 8.00 pm, the Car hit against a Truck parked on the Highway. It is stated that visibility was poor because of fog. Due to the seriousness of the impact, fatal injuries were caused, ultimately, leading to the death of the driver of the Car and the two other persons. This led to separate claim applications before the Claims Tribunal, preferred by the legal representatives of the deceased under Section 163-A of the Motor Vehicles Act, 1988 seeking compensation from the owner, driver and insurer of the offending vehicle. It was contended before the Claims Tribunal that the deceased in MAC No.758 of 2013, who was driving the Car at the relevant time, was engaged as a 'Broker' with a monthly income of Rs.3,300/-. In the other two cases, the contention was that the deceased were engaged as 'Shopkeeper' with a monthly income of Rs.3,200/-.

5. Since no negligence was liable to be considered in a claim under Section 163-A of the Motor Vehicles Act, 1988, the Claims Tribunal proceeded to award compensation in terms thereof, reckoning the notional income of the deceased as Rs.3,000/- per month in all three cases. Applying the multiplier of '10', the loss of dependency was fixed at Rs.1.8 Lacs. In fact, the Claims Tribunal had deducted 50% from the annual income towards the 'personal expenses', as all the deceased were bachelors. The Claims Tribunal awarded a

further sum of Rs.10,000/- to the claimants in each of the three cases, towards loss of love and affection and another sum of Rs.2,000/- each, towards funeral expenses, thus, fixing the total compensation of Rs.1,92,000/-. This was directed to be satisfied by the Insurer of the offending vehicle with the interest as specified in the award.

6. The learned counsel for the Appellants submits that the Claims Tribunal has gone totally wrong in fixing the 'multiplicand' and the 'multiplier'.

7. We have heard the learned counsel for the appellant and also perused the pleadings and the materials on record.

8. It is settled law, that a claim under Section 163-A of the Motor Vehicles Act, 1988, where negligence does not require to be pleaded or proved, can be preferred only in respect of a particular class of people whose annual income is less than Rs.40,000/-. In all other cases, where the annual income is above than Rs.40,000/-, it has to be considered in terms of Section 166 of the Motor Vehicles Act, 1988.

9. In MAC No.758 of 2013, the monthly income was claimed as Rs.3,300/-; whereas in other two cases, it was claimed as Rs.3,200/-. The deceased were aged 23 years in MAC No.758 of 2013 and MAC No.760 of 2013; whereas in the other case i.e. MAC No.759 of 2013, the deceased was only 19 years of age, as put-forth by the claimants.

10. After considering the pleadings and evidence on record, the Claims Tribunal fixed Rs.3,000/- as the reckonable notional monthly income of the deceased, which is quite in order. However, coming to the appropriate multiplier, the Claims Tribunal has reckoned only '10'.

11. It is settled law by virtue of ruling rendered by Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121,** as affirmed by the Constitution Bench in ***National Insurance Company Limited vs Pranay Sethi & Others*** reported in **(2017) 16 SCC 680,** that the multiplier has to be fixed with reference to the age of the deceased. In a claim under Section 163-A of the Motor Vehicles Act, 1988, where negligence does not require to be pleaded or proved, the compensation can be awarded only in a structured manner i.e. as envisaged in the 2nd Schedule.

12. Right from ***U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors., (1996) 4 SCC 362***, the Apex Court had been alerting the Law makers that the 2nd Schedule was full of mistakes and has held that it could be taken only as a 'guideline'. In the case of a person aged between 15 and 20 years, the appropriate multiplier is 16, whereas in case of a person aged between 20 and 25 years, it is '17'. Similarly, by virtue of the nature of the claim under Section 163-A and the 'Note' given under the head 'Fatal Accidents' in the II Schedule, the amount of compensation has to be reduced by '1/3rd' attributable to the personal expenses of the victim.

13. In the instant case, stating that the deceased was a bachelor, the Claims Tribunal, placing reliance on the decision reported in *2011 (3) MPHT 91 CG* (*Smt. Samarin Bai and Others v. Mangal Singh and Others*), has deducted 50% towards the personal expenses. This according to us, is not correct, as the 2nd Schedule clearly says that the amount of compensation has to be reduced by '1/3rd ' and never beyond. This is more so, since the 2nd Schedule does not envisage consideration of any future prospects or addition of the income and also without any need or necessity to plead / prove negligence.

14. On re-working the compensation in respect of the fatal accident, in **MAC No.760 of 2013**, it comes to 3,000 x 12 x 2/3 x 17 = Rs.4,08,000/-. Towards the General damages, Rs.2,000/- is payable towards funeral expenses and Rs.2,500/- towards loss of estate. Since the deceased was a bachelor, no loss of consortium is payable, which can be paid only to the beneficiary spouse. Thus, the total compensation payable comes to Rs.4,12,500/-. Since the Claims Tribunal has awarded Rs.1,92,000/-, the balance payable comes to **Rs. 2,20,500/- (Two lac twenty thousand and five hundred only)**. Exactly same is the calculation in respect of **MAC No.758 of 2013** as well and hence, the said Appellants are also entitled to get a balance of **Rs.2,20,500/- (Two lac twenty thousand and five hundred only).**

15. Coming to **MAC No.759 of 2013**, the deceased was admittedly aged about 19 years. Since the appropriate multiplier in respect of a

person aged between 15 and 20 years is 16, the calculation of the compensation is as follows : 3,000 x 12 x 2/3 x 16 = Rs.3,84,000/-. Further amounts of Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate are also awarded towards General damages. Thus, the total compensation comes to **Rs.3,88,500/-**. After giving credit to the sum of Rs. 1,92,000/- already awarded by the Claims Tribunal, the balance payable comes to **Rs.1,96,500/- (One lac ninety six thousand and five hundred only)**

16. Since the policy in respect of the offending vehicle is admitted and the Award passed by the Tribunal fixing liability on the Insurance Company concerned has not been challenged, the above amount shall be satisfied by the said Insurer with interest @ 7% per annum from the date of claim application, till satisfaction. The amount as above shall be worked out and deposited before the Claims Tribunal, as expeditiously as possible, at any rate within 'two months' from the date of receipt of a copy of this judgment. All the three appeals stand allowed to the said extent.

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

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