

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 836 of 2015

1. Tripan Mahar S/o Somiya Mahar, Aged About 43 Years,
 2. Geeta Bai W/o Tripan Mahar, Aged About 40 Years,
- Both are R/o Village Gunderdehi, Post Bandha Bazar, Distt. Rajnandgaon Chhattisgarh.

---- Appellants

Versus

1. Shivnarayan S/o Shivprasad Gond, R/o Village Kilargondi, Thana- Ambagarh Chauki, Post - Banda Bazar, Distt. Rajnandgaon Chhattisgarh
 - 2-A Omprakash Khandewal S/o Ghansyam Das Khandewal, Aged About 39 Years, R/o Bandha Bazar, Tahsil Ambagarh Chauki, Distt. Rajnandgaon Chhattisgarh,
 - 2-B Arunkumar Khandewal S/o Ghansyam Das Khandewal, Aged About 30 Years,
 - 2-C Anant Kumar Khandewal S/o Ghansyam Das Khandewal, Aged About 31 Years
 - 2-D Manju Bai Wd/o Bhagwan Das Khandewal, Aged About 30 Years,
 - 2-E Vinit Kumar Khandewal S/o Late Bhagwan Das Khandewal, Aged About 19 Years,
 - 2-F Ku. Vishakha Khandewal D/o Late Bhagwan Das Khandewal, Aged About 25 Years,
 - 2-G Ku. Gunja Khandewal D/o Late Bhagwan Das Khandewal, Aged About 23 Years
- All are R/o Bandha Bazar, Tahsil Ambagarh Chauki, Distt. Rajnandgaon Chhattisgarh.

---- Respondents

For Appellants	: Shri Samir Singh, Advocate
For Respondent No.1	: None
For Respondents No.2A to 2G	: Shri Aditya Bhardwaj, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

29/10/2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 22/06/2015

passed by the Motor Accident Claims Tribunal Rajnandgaon, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.35 of 1992 whereby learned Claims Tribunal allowed the claim application filed under Section 166 of the M.V. Act in part and awarded Rs.1,27,000/- as compensation in fatal accident case.

2. Facts of the case in nutshell, are that, on 08/05/1992, Nathu Ram Mahar was working as Labourer with Bhagwan Das Khandelwal. At the time of accident, he was employed to work on Tractor bearing No.M.B.T.8836 (hereinafter referred to as 'offending vehicle') as Loader of boulder (stones). When Nathu Ram Mahar along with driver of offending vehicle was returning with loaded Tractor Trolley, it turned turtled. In the said accident, Nathu Ram Mahar came under the boulder loaded on Trolley and suffered grievous injuries. His left ear was amputated, suffered grievous injuries over waist, back bone and both of his leg became paralytic. Nathu Ram Mahar was admitted to District Hospital, Rajnandgaon from where, he was refereed to D.K. Hospital, Raipur on 10/05/1992. He took treatment as inpatient in D.K. Hospital, Raipur from 12/05/1992 to 11/06/1992. He died on 02/12/1992. As per death certificate, his death was a result of injuries suffered by him.
3. Appellants/claimants who are parents of the deceased filed an application under Section 166 of the M.V. Act pleading

therein that on the date of accident, deceased was 20 years of age, earning Rs.40/- per day. Bhagwan Das Khandelwal i.e. his employer also give bonus of two months in a year and claimed Rs.12,06,000/- as total compensation.

4. Non-applicants No.1 submitted reply to claim application pleading therein that accident had not taken place on account of his negligence and it is the deceased himself who tried to drive the offending vehicle when non-applicant No.1/driver went to answer natural's call. Legal Representatives of late Bhagwan Das Khandelwal filed reply to claim application pleading that accidental injuries and death of deceased was on account of his own negligence, amount of compensation claimed is highly exaggerated.
5. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that Nathu Ram Mahar suffered grievous injuries on account of rash and negligent driving of offending vehicle by non-applicant No.1, he died on 02/12/1992 on account of injuries suffered by him in a motor accident and awarded Rs.1,27,000/- as total compensation.
6. Shri Samir Singh, learned counsel for appellants/claimants submits that learned Claims Tribunal erred in awarding meager amount of compensation. He further submits that learned Claims Tribunal has not awarded any amount

towards future prospects and amount awarded on other heads except medicine and treatment is on lower side. He also contended that compensation awarded on other conventional heads is also on lower side. He places his reliance on case law of Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**.

7. Per contra, Shri Aditya Bhardwaj, learned counsel for respondents No.2-A to 2-G submits that learned Claims Tribunal taking into consideration overall facts and circumstances of the case awarded just amount of compensation, which does not call for any interference. He further argued that respondents are agriculturists, which may also be kept in mind while awarding compensation to the claimants if there is some enhancement in amount of compensation already awarded by Claims Tribunal.
8. I have heard learned counsel for the respective parties and perused the record carefully.
9. Respondents have not challenged the finding recorded by learned Claims Tribunal while passing impugned award. This appeal is only with regard to enhancement of amount of compensation, hence, only short question arise for consideration of this Court that whether learned Claims Tribunal awarded just amount of compensation or not.

10. Claimants themselves pleaded income of deceased as Rs.40/- per day. Learned Claims Tribunal accepted the income pleaded in claim application and calculated the amount of compensation assessing the income of the deceased as Rs.40/- per day i.e. Rs.1,200/- per month. Learned Claims Tribunal applied multiplier of 15, considering the age of mother of deceased, which is erroneous.
11. Application of multiplier in cases of death of bachelor has now been well settled in case of **Sube Singh and Others v. Shyam Singh (dead) and Others** reported in **2018 (3) SCJ 269**, in which, while considering its earlier judgments, Hon'ble Supreme Court has held thus :

“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.”

12. In view of above, the multiplier is to be applied taking into consideration, age of deceased. In claim application, age of deceased is mentioned as 20 years. In Ex.P/6 which is the document of Medical Collage and D.K. Hospital, Raipur mentions the age of deceased as 20 years, hence, age of deceased is to be taken as 20 years on the date of accident. As per guidelines issued by Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, application of multiplier of 18 has been mentioned for the persons of age group between 15-20 years and 21 to 25 years, hence, appropriate multiplier would be 18.
13. Learned Claims Tribunal has awarded Rs.2,000/- towards funeral expenses, Rs.2,000/- towards loss of love and affection, which is on meager side. Though there is no head of love and affection under which compensation can be awarded to the parents, but recently Hon'ble Supreme Court while considering the award of compensation under the head of 'loss of consortium' has explained three types of

loss of consortium in case of **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram & Others** reported in **(2018) 18 SCC 130** : (i) loss of spousal consortium to the wife (ii) loss of parental consortium to the children (iii) loss of filial consortium to parents. As per the judgment of Hon'ble Supreme Court in **Pranay Sethi** (supra), amount of loss of estate and funeral expenses is fixed as Rs.15,000/- each. Learned Claims Tribunal has awarded Rs.4,500/- towards medical expenses, Rs.4,000/- towards attendant, Rs.1,000/- towards transportation expenses and Rs.5,000/- towards pain and suffering, which in the opinion of this Court, appears to be proper compensation taking into consideration the date of accident to be of 08/05/1992.

14. For the foregoing reasons, the amount of compensation to be awarded to the claimants requires reconsideration and recalculation, which is as under :-

Income of deceased is taken as Rs.40/- per day i.e. Rs.1,200/- per month and Rs.14,400/- per annum. By adding 40% of the income towards future prospects, total annual income of deceased will come to Rs.20,160/- ($14,400 \times 40\% = 5,760$ and $14,400 + 5,760$). After deducting 50% towards personal and living expenses of deceased, yearly loss of dependency of claimants will come to Rs.10,080/- ($21,160 \times 50\% = 10,080$ and $20,160 - 10,080$). By applying the multiplier of 18, amount of compensation towards loss of dependency

will come to Rs.1,81,440/- (10,080 x 18). Apart from above, the claimants will be further entitled for a sum of Rs.40,000/- towards filial consortium to the parents, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

15. The claimants will further be entitled for a sum of Rs.4,500/- towards medical expenses, Rs.4,000/- towards attendant, Rs.1,000/- towards transportation expenses and Rs.5,000/- towards pain and suffering as awarded by learned Claims Tribunal.
16. Now, the appellants/claimants are entitled for total compensation of Rs.2,65,940/- (1,81,440 + 40,000 + 15,000 + 15,000 + 4,500 + 4,000 + 1,000 + 5,000) instead of Rs.1,27,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum as awarded by Claims Tribunal from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.
17. In the result, the appeal is allowed in part and impugned award is modified to the extent as indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh