NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 03 of 2015

1. Bhagat Ram S/o Bharat Chauhan, aged about 47 years
2. Janki @ Janki Bai W/o Bhagat Ram Chauhan, aged about 44 years
   Both R/o Gram Pali, P.S. Punjipathra Tahsil and District Raigarh C.G.

----Appellants/Claimants

VERSUS

1. Upendra Sharma S/o Mahendra Sharma (Vehicle Driver) Occupation- Vehicle Driver at present R/o Shradhda Road Carrier, Vrindawan Colony C.M.O. Tiraha Chowk, Raigarh District Raigarh C.G.
2. Rakesh Pandey @ Rakesh Kumar Pandey S/o Murlidhar Pandey (Vehicle Owner) aged about 35 years, R/o in front of Bagh Talab Rajapara, Raigarh C.G.
3. Branch Manager, Universal Sempo General Insurance Company Limited Raipur C.G. **-----------Respondents**

For Appellants	:	Mr. Manoj Kumar Jaiswal, Advocate on behalf of Mr. Hemant Kumar Patel, Advocate
For Respondents	:	None.

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

02/01/2020

1. Challenge in this Appeal is to the award dated 04-09-2014 passed by learned Motor Accident Claims Tribunal, Raigarh C.G. in Claim case No. 43/2013 whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 3,62,000/- as compensation along with interest @ 6% per annum from the date of filing of claim application till its realization.

2. Facts of the case are that, on 20-04-2013 at about 10:30 when Nirmal Kumar Chouhan (deceased) was traveling on his motorcycle and going to Gharghoda from Gourmudi, at that relevant time, one trailer truck bearing registration No.

CG-13-D-2580 (hereinafter referred to as "the offending vehicle") driven by respondent No. 1/ non-applicant No. 1- driver dashed the motorcycle of the deceased due to which he suffered grievous injuries over his person and succumbed to death on spot. The matter was reported to the Police Station Gharghoda based upon which Crime No. 163/2013 for offence under Section 304-A was registered. The appellants/ claimants who are the parents of the deceased filed claim application before the Claims Tribunal mentioning therein that on the date of accident, deceased was aged about 28 years and was working as Head Master at Bharat Public School, Saraipali and was also engaged in tuition classes and thereby earning Rs. 15,000/- per month. On the basis of aforementioned pleadings, they have claimed for Rs. 59,60,000/- as total compensation.

3. Non-applicant No. 1/ respondent No. 1 did not submit his reply to the claim application even after service of notice and he was proceeded as *ex parte.*

4. Non-applicant No. 2/ Respondent No. 2 who is the owner of the offending vehicle submitted his reply to the claim application and denied all the adverse pleadings. It was also pleaded that on the date of accident, offending vehicle was insured with non-applicant No. 3/ respondent No. 3- Insurance Company and therefore the liability, if any, would be on Insurance Company and prayed for dismissal of claim application against him.

5. Non-applicant No. 3/ respondent No. 3- Insurance Company submitted its reply to the claim application and denied the fact of accident and also that the offending vehicle was insured with the Company. It was also pleaded that on the date of accident non-applicant No. 1/ respondent No. 1 was not possessing valid and effective driving license and the offending vehicle was driven without any permit, fitness certificate and the entire tax was unpaid. There was

violation of conditions of insurance policy and Insurance Company is not liable for payment of any amount of compensation.

6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, had held that the accident took place due to rash and negligent driving of non-applicant No. 1/ respondent No. 1 and on account of accident with the offending vehicle, Nirmal Kumar Chouhan died. The learned Claims Tribunal has taken into consideration the educational background of the deceased and also the evidence of the applicants' witnesses in this effect and assessed the income of the deceased as Rs. 6,000/- per month, after deducting 50% towards personal and living expenses, awarded Rs. 3,62,000/- as compensation.

7. Learned counsel for the appellants/ claimants submits that the learned Claims Tribunal committed error in assessing monthly income of the deceased as Rs. 6,000/- only whereas the appellants/ claimants specifically pleaded and stated before the Tribunal about the monthly income of the deceased on the date of accident as Rs. 15,000/-. He further submitted that learned Claims Tribunal committed error in applying multiplier of 10 by taking into consideration the age of the claimants/ appellants i.e. the parents of the deceased, which is erroneous as the multiplier is to be applied on the basis of the age of the deceased as on the date of accident. He further submits that learned Claims Tribunal also committed error in not awarding any amount towards loss of future prospects and awarded a meagre amount for other conventional heads. Learned counsel for the appellants-claimants submits that the amount of compensation may suitably be enhanced in the facts and circumstances of the case.

8. No one appeared on behalf of the respondent No. 3- Insurance Company.

9. I have heard learned counsel appearing for the appellants-claimants and perused the record.

10. The learned Claims Tribunal dealt with the issue of income of the deceased and for assessing monthly income of the deceased, has taken into consideration the documents exhibited by the appellants-claimants as Ex. P-2 to P-6 which are Admit Card and other educational testimonials of the deceased. The deceased on the date of accident was B.Sc. Graduated, but the parents i.e. appellants-claimants have not placed any documentary evidence with regard to appointment of deceased as Head Master in a school so as to prove the monthly salary of the deceased, as claimed. The appellants-claimants failed to prove the income of the deceased.

11. In the opinion of this Court, the learned Claims Tribunal has not committed any error in assessing income of the deceased as Rs. 6,000/- per month on the basis of income claimed and stated in the statement that he was earning some income from giving tuition classes. The monthly income of the deceased assessed by the learned Claims Tribunal cannot be found fault with. Sofar as, the other ground raised by the learned counsel for the appellants-claimants that learned Claims Tribunal committed error in applying multiplier of 10 on the basis of the age of the claimants is concerned, the Hon'ble Supreme Court in this regard in the matter of ***Sube Singh v. Shyam Singh*** reported in **(2018) 3 SCC 18** has held that for the purpose of calculating the amount of compensation to be awarded to the claimants, the multiplier is to be applied on the basis of the age of the deceased on the date of accident and not on the basis of age of the parents of the deceased and 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 Jugde 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 the law laid down by the Supreme Court and considering the postmortem report (Ex. A-14) whereas age of the deceased has been shown as 28 years, the appropriate multiplier in the facts of the case would be of 17. Looking to the age of the deceased on the date of accident as 28 years, there will be an addition of 40% in the income of the deceased towards loss of future prospects.

13. In view of the above, amount of compensation awarded by the Claims Tribunal requires to be reconsideration and recalculation which this Court proposes as under.

14. By taking income of the deceased as Rs. 6,000/- per month i.e. Rs. 72,000/- per annum and an addition of 40% of the established income towards future prospects, total monthly income of the deceased will come to Rs. 8,400/- [Rs. 6000+ Rs. 2400 (40% of Rs. 6000)] and annual income will come to Rs. 1,00,800/-. After deduction of 50% from the yearly income of the deceased towards personal and living expenses, the loss of yearly dependency comes to Rs. 50,400/-. As on the date of accident, deceased was aged about 28 years, multiplier of 17 will be applicable for calculating the amount of total loss of dependency. After applying multiplier of 17, total loss of dependency comes to

Rs. 8,56,800/- (Rs. 50,400X 17). Apart from the aforementioned amount, the claimants will also be entitled for an amount of Rs. 30,000/- towards other conventional heads. Now, the appellants-claimants would be entitled for total amount of compensation of Rs. 8,86,800/- (Rs. 8,56,800+Rs. 30,000) instead of Rs. 3,62,000/- as awarded by learned Claims Tribunal. The aforementioned total amount of compensation will carry interest @ 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.

15. Consequently, the appeal is allowed in part and the impugned award stands modified to the extent indicated herein-above.

Sd/-
(Parth Prateem Sahu)
Judge

Pawan