

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 84 of 2015

1. Smt. Rajni Bai W/o Ghansyam Gond, Aged About 40 Years,
 2. Ghansyam Gond, S/o Fool Singh, Aged About 44 Years,
- Both are R/o Village- Sakri, Ward No. 15, Thana- Chakarbhata, Revenue/Civil Distt. Bilaspur (C.G.).

---- Appellants

Versus

1. Narottam Kumar S/o Suresh Kumar Kaushik, Aged About 23 Years, R/o Village- Pipartarai, Thana/Tahsil Kota, District Bilaspur (C.G.),
2. Bholaprasad Sharma, S/o Mahavirprasad Sharma, R/o Ward No. 29, Kasyap Colony, Near Bus Stand, Revenue/Civil Distt. Bilaspur (C.G.),
3. Branch Manager, Shriram General Insurance Company Ltd., Regional Office- E/8, E.P.I.P.R. I.I.C.O. Industrial Area, Sitapura, Revenue/Civil District Jaipur (Rajasthan).

---- Respondents

For Appellants	: Shri Samir Singh, Advocate
For Respondents No.1 & 2	: None
For Respondent No. 3	: Shri H.B. Agrawal, Sr. Advocate with Shri Pankaj Agrawal, Advocate

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

Judgment on Board

Per Parth Prateem Sahu, Judge

14.01.2021

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 impugned award dated 05.01.2015 passed by the 3rd Additional Motor Accident Claims Tribunal,

Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.296 of 2014 whereby learned Claims Tribunal allowed the application under Section 166 of the M.V. Act in part and awarded Rs.2,72,000/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, on 11.10.2013, at about 2.20 PM, Lalit Dhruv was travelling on a bicycle of his friend Rajkumar Dhruv as a pillion rider and coming to Nature City at village Uslapur from village Sakri on Bilaspur-Mungeli Road. While so, when they reached near old Electricity Office, one Bus bearing No.CG-10/G/0526 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed the bicycle driven by Rajkumar Dhruv. In the aforementioned accident, Rajkumar Dhruv died on spot and Lalit Dhruv suffered grievous injuries over his person. He was taken to CIMS Hospital, Bilaspur, from where, he was referred to Dr. B.R. Ambedkar Memorial Hospital, Raipur. During the course of treatment, he succumbed to the injuries on 16.10.2013.
3. Appellants/claimants, who are parents of deceased Lalit Dhruv filed an application under Section 166 of the M.V. Act seeking compensation of Rs.11,13,000/- pleading therein that on the date of accident, deceased was an able-bodied person of 19 years, working as Mason, earning Rs.4,500/- per month and they were dependant upon the income of deceased.

4. Non-applicants No.1 and 2, who are driver and owner of offending vehicle submitted reply to claim application jointly, while denying the pleadings made therein, pleaded that claim application has been filed on false and frivolous grounds; amount of compensation claimed was highly exaggerated; non-applicant No.1/driver of offending vehicle was possessed with valid and effective driving licence, offending vehicle was insured with non-applicant No.3/ Insurance Company for a period from 23.05.2013 to 22.05.2014, as such, liability, if any, would be upon the Insurance Company to satisfy the amount of compensation.
5. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying all the adverse pleadings made therein, pleaded that on the date of accident, non-applicant No.1 was not possessed with valid and effective driving licence; there was breach of policy conditions; accident was on account of rash and negligent driving of bicycle; deceased was not doing any work and dependant upon his parents.
6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal arrived at a finding that Lalit Dhruv died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1; breach of policy conditions and contributory negligence were not found to

be proved, while assessing the income of deceased as Rs.3,000/- per month and Rs.36,000/- per annum awarded total compensation of Rs.2,72,000/-.

7. Shri Samir Singh, learned counsel for the appellants/ claimants submits that learned Claims Tribunal erred in awarding meagre amount of compensation taking into consideration the income of deceased as Rs.3,000/- per month only overlooking the date of accident, nature of occupation of the deceased as Helper of Mason. It is contended that learned Claims Tribunal has not awarded any amount towards future prospects and erred in applying multiplier of 14 taking into consideration the age of parents instead of age of deceased. It is further contended that learned Claims Tribunal has awarded meagre amount of compensation towards other conventional heads and submits that amount of compensation to be awarded to the appellants/claimants be suitably enhanced.
8. Per contra, Shri H.B. Agrawal, learned senior counsel for respondent No.3/Insurance Company submits that deceased was only 19 years of age and not doing any work, in absence of any proof of income of deceased, learned Claims Tribunal justified in assessing the income on notional basis. It is contended that amount of compensation awarded by learned Claims Tribunal is just and proper in the facts and circumstances of the case, which does not call for any interference.

9. We have heard learned counsel for the respective parties and perused the record carefully.
10. This appeal is filed by the appellants/claimants only for enhancement of amount of compensation.
11. To appreciate the submission made by learned counsel for the appellants/claimants with regard to assessment of income of deceased, claimants in claim application have pleaded that on the date of accident, deceased was doing the work of Helper of Mason and earning Rs.150/- per day i.e. Rs.4,500/- per month. In support of their pleadings, they have examined Ghansyam Gond (AW-1), father of deceased, who in his affidavit filed under Order 18 Rule 4 of the CPC stated that on the date of accident, deceased was 19 years of age, working as Helper of Mason and earning Rs.4,500/- per month. In cross-examination, he clarified that deceased was working in Nature City, Uslapur and further stated that there was no fixed place of his working; deceased was getting work for 20-25 days. True it is that appellants/claimants have not filed any documentary evidence with regard to income of deceased, which may not be possible for them in view of the nature of occupation of deceased i.e. working as Helper of Mason (Labourer) and working in different places and not engaged in employment at one place only.
12. When the income could not be proved by placing admissible piece of evidence, then income is to be calculated/assessed

on notional basis. For assessing the income on notional basis, income of victim is to be assessed keeping in mind the relevant factors like date of accident, price index, wage structure and cost of living etc. Taking into consideration the aforementioned factors and evidence available on record, we find it appropriate to assess the income of deceased as Rs.4,000/- per month.

13. The law with regard to award of future prospects is now well settled by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in (2017) 16 SCC 680, wherein it is 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.”

14. As on the date of accident, deceased was not in a permanent employment, there shall be addition of 40% to the established income towards future prospects.

15. So far as ground raised by learned counsel for the appellants/claimants with regard to application of multiplier considering the age of parents is concerned, application of multiplier in cases of death of a bachelor has been recently considered 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 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.”

16. In the aforementioned ruling, Hon'ble Supreme Court has held that in case of death of unmarried person, age of victim/deceased is to be considered for applying the multiplier and not the age of parents. In view of aforementioned law laid down by Hon'ble Supreme Court, learned Claims Tribunal erred in applying multiplier of 14 considering the age of parents of deceased, which is not sustainable and is hereby set aside.
17. On the date of accident, deceased was aged about 19 years and in view of dictum of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** appropriate multiplier would be 18 and it is ordered accordingly.
18. Award of amount of compensation on other conventional heads has also been considered by Hon'ble Supreme Court in case of **Pranay Sethi (supra) Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**. Claims Tribunal has awarded only Rs.20,000/- towards other conventional heads, which is also required to be enhanced.
19. For the aforementioned reasons and discussions, the amount of compensation awarded by Tribunal to the appellants/claimants requires re-consideration and re-computation, which is as under :

The monthly income of deceased as assessed by this Court is taken as Rs.4,000/- per month and Rs.48,000/- per annum. By adding 40% of income towards future prospects, total annual income of deceased will come to Rs.67,200/- ($48,000 \times 40\% = 19,200$ and $48,000 + 19,200$). After deducting 50% ($1/2$) towards personal and living expenses of deceased, annual loss of dependency of appellants/claimants will come to Rs.33,600/- ($67,200 / 2$ and $67,200 - 33,600$). By applying multiplier of 18, amount of compensation towards loss of dependency will come to Rs.6,04,800/- ($33,600 \times 18$). Apart from above, appellants/claimants will be further entitled for a sum of Rs.40,000/- towards filial consortium to parents (payable to the parents because of the death of their son), Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

20. The pleadings and documents placed on record along with claim case would show that deceased was immediately taken to CIMS Hospital, Bilaspur on 11.10.2013, from where, on the same day, he was referred to Dr. B.R. Ambedkar Memorial Hospital, Raipur and during the course of treatment, he died on 16.10.2013. Learned Claims Tribunal has not awarded any amount towards transportation, pain and suffering and other required expenses like food, attendant, etc. during this period, for which, appellants/claimants are entitled for.

21. Taking into consideration overall facts and circumstances of the case that deceased was under treatment since 11.10.2013 to 16.10.2013, we find it appropriate to award Rs.10,000/- towards pain and suffering to parents and Rs.10,000/- towards transportation, attendant charges.
22. Now, appellants/claimants are entitled for total compensation of Rs.6,94,800/- (6,04,800 + 40,000 + 15,000 + 15,000 + 10,000 + 10,000) instead of Rs.2,72,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.
23. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated herein-above.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh