NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1558 of 2015

1. Smt. Bugli Bai, W/o Patiram Gond, Aged About 40 Years
2. Patiram S/o Daddisingh Gond, Aged About 44 Years

   Both R/o Village- Turi, Thana- Dhanpuri, Distt.- Sahdol. At Present R/o Village- Mangla, Thana Civil Line, Revenue/ Civil Distt. Bilaspur, Chhattisgarh ....Claimants

---- Appellants

Versus

1. Ramraj Yadav, S/o Late Ramkhilavan Yadav, Aged About 48 Years, R/o Village- Lakhno, Thana- Gyanpur, Distt. Bhadohi U.P. At Present R/o Tiwari Transport, Transport Nagar, Distt. Korba, Chhattisgarh ....Driver
2. Ramesh Chandra Maurya, S/o Phoolchandra Maurya, R/o Ward No.19, Champa Bypass Road, Mudapar Korba, Revenue/ Civil Distt. Korba, Chhattisgarh ....Owner
3. Branch Manager, Royal Sundaram Alliance General Insurance Co. Ltd., Regional Office- Chawla Complex, Sai Nagar, Devendra Nagar Road, Distt. Raipur, Chhattisgarh, 492009 Address is Wrongly Mentioned In Order Sheet ....Insurance Company

---- Respondents

For Appellants	:	Shri Samir Singh, Advocate
For Respondents- 1 and 2	:	None appears
For Respondent-3	:	Shri BN Nande and Shri Anupam Dubey, Advocates

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Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

13.09.2021

1. Challenge in this appeal is to the award dated 28.09.2015 passed by the 7th Additional Motor Accident Claims Tribunal, Bilaspur (for short, 'Claims Tribunal') in Claim Case- 279 of 2014, whereby learned Claims Tribunal allowed application filed under Section 166 of the Act of 1988 in part, awarded Rs.4,08,000/- as compensation in a fatal accident case. Tribunal further awarded interest @ 6% per annum from the date of filing of application till its realisation and fastened liability to satisfy compensation upon NA 1, 2 and 3 jointly and severally.

2. Facts relevant for disposal of this appeal are that, on 15.10.2010 at about 6 am, Prem Singh (since deceased) was travelling on a Truck bearing No.CG12S-2200 (hereafter, referred to as 'offending vehicle') as helper from Raipur to Korba under employment of NA2. When the Truck reached near village Hirri, it met with an accident due to rash and negligent driving of offending vehicle by NA1 and dashed with a stationary Truck (CG04 DH-9172) standing on road side. In the accident, Prem Singh suffered grievous injuries on his person. He was taken to CIMS Hospital, Bilaspur, where during the course of treatment, he succumbed to the injuries.

3. Appellants/ claimants, who are parents of deceased filed an application under Section 166 of the act of 1988 pleading therein that on the date of accident, deceased was working as helper in the offending vehicle and earning salary of Rs.4,500/- per month and Rs.100/- as daily allowance. Claimants were dependant upon income of deceased and claimed total compensation of Rs.17,35,000/- on different heads.

4. NA1 and 2, who are Driver and Owner of offending vehicle submitted reply to claim application, denying claim of appellants. It was pleaded that NA1 was driving offending vehicle cautiously. Accident occurred as a result of negligence on the part of driver of other stationary Truck, which was parked wrongly by its driver, without putting any indicator. NA1 was possessed with valid and effective driving license with him on the date of accident and offending vehicle was insured with NA3, Insurance Company.

5. NA3 / Insurance Company of offending vehicle submitted its reply denying the facts pleaded in claim application. Employment of deceased as helper was also denied. It was further pleaded that NA1 was not possessed with valid and effective driving license on the date of accident, as such, there was breach of policy conditions.

6. Upon appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that late Prem Singh died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA1; breach of policy conditions was not found to be proved; upon assessing income of deceased as Rs.4,500/- per month, awarded total sum of Rs.4,08,000/- as compensation.

7. Shri Samir Singh, learned counsel for the appellants would submit that learned Tribunal has not awarded any amount of compensation towards future prospects, overlooking the age of deceased, who was only 22 years of age on the date of accident. Tribunal erroneously applied multiplier of 14 considering the age of parents of deceased, instead of deceased himself. Even if deceased was a bachelor/unmarried for the purpose of calculating amount of compensation, multiplier is to be applied considering the age of deceased. He further pointed out that Tribunal has further awarded meagre sum of Rs.30,000/- only on other conventional heads. Learned counsel placed reliance upon judgments of Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others reported in** (2017) 16 SCC 680 and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram**

and Others, (2018) 18 SCC 130, in support of his contention. He also placed reliance upon judgment of Hon'ble Supreme Court in case of **Sube Singh and another Vs Shyam Singh (dead) and others** reported in 2018 (3) SCC 18 in support of his contention with regard to applicatin of multiplier.

8. Shri BN Nande and Shri Anupam Dubey, learned counsel for respondent-3/Insurance Company opposing the submissions made by learned counsel for the appellants, would submit that amount of compensation calculated by learned Claims Tribunal in the facts and circumstances of the case, is just and proper, which does not call for any interference.

9. I have heard learned counsel for the parties and also perused the record of claim case.

10. So far as 1st submission with regard to non-award of any compensation for future prospects is concerned, Hon'ble Supreme Court in case of **Pranay Sethi** (supra), has considered the issue with respect to award of future prospects to the victim/LRs in a fatal accident case.

11. In aforementioned case, Supreme Court has said that where the deceased was not in permanent employment and less than 40 years, there will be addition of 40% of his established income for the purpose of calculating amount of compensation. It is ordered accordingly.

12. The 2nd ground of learned counsel for the appellants of applying wrong multiplier of 14 considering age of parents of deceased is

concerned, it is undisputed that on the date of accident, deceased was unmarried. Hon'ble Supreme Court has considered the issue with respect to application of multiplier where deceased was bachelor.

13. In case of **Sube Singh and another Vs Shyam Singh (dead) and others** reported in 2018 (3) SCC 18 the issue with regard to application of multiplier in case of bachelor has been discussed by Hon'ble Supreme Court and held as under:

> "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 Vs Ramkaran Ramchandra Sharma**[1] 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 Vs Vipin Kumar Sharma**[2] 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 dependants. We may usefully refer to the exposition in paragraph Nos. 11 and 12 of the reported decision, which read thus:
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>> "11. The remaining question is only on multiplier. The High Court following **Santosh Devi Vs National Insurance Company Limited**[3], has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in **Reshma Kumari Vs Madan Mohan**[4]. It

1 (2015) 2 SCC 180
2 (2015) 6 SCC 347
3 (2012) 6 SCC 421
4 (2013) 9 SCC 65

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 dependants 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 (*supra*) para 36)

> "36.In Sarla Verma Vs DTC[5] 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 (*supra*) 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 dependants. 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 (*supra)*."

12. In Sarla Verma (*supra*), at paragraph-19 a two-Judge Bench dealt with this aspect in Step 2. To quote (SCC p133):

> "19.xxxx xxxxxx xxxx Step 2 (ascertaining the multiplier)
>
> 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

[5] (2009) 6 SCC 121

> 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."

> 5. Considering the aforementioned principle expounded in Sarla Verma (supra), which has been affirmed by the Constitution Bench of this Court in **National Insurance Company Ltd. Vs Pranay Sethi and Ors**[6], the appellants are justified in insisting for applying multiplier 18.
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> It is categorically laid down law that in death case of a bachelor consideration of application of multiplier would be age of deceased and not the age of his dependants.

14. If the facts of case are taken into consideration in light of above rulings of Hon'ble Supreme Court, learned Claims Tribunal erred in applying multiplier of 14, considering age of parents of deceased which is not sustainable and it is hereby set aside.

15. In above circumstances of the case, where deceased is aged about 22 years, appropriate multiplier shall be 18 instead of 14 as applied by learned Claims Tribunal. It is ordered accordingly.

16. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has considered heads for awarding amount of compensation on other conventional heads ie loss of consortium, loss of estate and funeral expenses. Further, in case of **Nanuram** (supra), Hon'ble Supreme Court explained types of loss of consortium as loss of spousal consortium, loss of parental consortium and loss of fillial consortium. Appellants/claimants

[6] (2017) 16 SCC 680

will be further entitled for award of amount of compensation on other conventional heads, as explained above.

17. For the foregoing reasons, amount of compensation to be awarded to the claimants requires re-computation and re-calculation which is as under:

(a) Income of deceased has been taken as Rs.4,500/- per month and Rs.54,000/- per annum.

(b) Upon adding 40% of established income to the annual income of deceased, total annual income would be Rs.75,600/- {54000 + (54000 x 40/100)}.

(c) After deducting 50% of annual income of deceased towards his personal and living expenses, annual loss of dependency comes to Rs.37,800/- {75600 — (75600 x 1/2)}.

(d) Upon applying multiplier of 18 to the annual loss of dependency, total loss of dependency comes to Rs.6,80,400/- (37800 X 18).

(e) Apart from above, claimants are further entitled for Rs.40,000/- towards loss of fillial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

18. Now the appellants/claimants are entitled for a total sum of **Rs.7,50,400/-** (680400 + 40000 + 15000 + 15000) as compensation instead of Rs.4,08,000/-, awarded by learned Claims Tribunal. The amount of compensation shall carry interest @ 6% from the date of filing of the claim application till its realization.

19. Award of default interest by Claims Tribunal is not sustainable because under Motor Vehicle Act, 1988, there is no provision of award of

default interest. Hence, award of default interest is set aside. Other conditions imposed by learned Claims Tribunal shall remain intact.

20. In the result, appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-
(Parth Prateem Sahu)
JUDGE

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