

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1097 of 2015

Order reserved on 18.06.2021

Order pronounced on 08.11.2021

1. Smt. Rafiya Begum W/o Sadruddeen, Aged About 46 Years Mother Of Deceased , R/o Ward No. 41 Near Nura Masjid, Kelabadi, Durg District Durg Chhattisgarh , Chhattisgarh
2. Sadruddeen S/o Badruddeen, Aged About 49 Years Father Of Deceased , R/o Ward No. 41 Near Nura Masjid, Kelabadi, Durg District Durg Chhattisgarh , District : Durg, Chhattisgarh
3. Naushin Bano W/o Firoj Khan , Aged About 25 Years Sister Of Deceased , R/o Ward No. 41 Near Nura Masjid, Kelabadi, Durg District Durg Chhattisgarh , District : Durg, Chhattisgarh
4. Jamiruddeen S/o Sadruddeen, Aged About 19 Years Younger Brother Of Deceased , R/o Ward No. 41 Near Nura Masjid, Kelabadi, Durg District Durg Chhattisgarh , District : Durg, Chhattisgarh
5. Hina Naz D/o Sadruddeen, Aged About 17 Years Through Sadruddeen S/o Badruddeen Younger Sister Of Deceased , R/o Ward No. 41 Near Nura Masjid, Kelabadi, Durg District Durg Chhattisgarh , District : Durg, Chhattisgarh
6. Badruddeen S/o Alfuddeen, Aged About 82 Years Grand Father Of Deceased , R/o Ward No. 41 Near Nura Masjid, Kelabadi, Durg District Durg Chhattisgarh , District : Durg, Chhattisgarh
7. Smt. Haliman Bai W/o Badruddeen, Aged About 75 Years Grand Mother Of Deceased , R/o Ward No. 41 Near Nura Masjid, Kelabadi, Durg District Durg Chhattisgarh , District : Durg, Chhattisgarh

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Versus

1. Kamlesh Kumar Sahu S/o Bhagwatram Sahu, Aged About 38 Years R/o Dumhatola, Post Padumtara, P.S. Ghumka, District Rajnandgaon Chhattisgarh Through Indian Solvent Industries, Baldevbag Rajnandgaon Chhattisgarh Driver Of The Vehicle , Chhattisgarh
2. Indian Solvent Industries, Baldevbag Rajnandgaon Chhattisgarh Owner Of The Vehicle , District : Rajnandgaon, Chhattisgarh
3. Bhartiya Axa General Insurance Company Limited, First Floor, Fames Icon, Serve No. 28, Dodankudi Village, K.R. Puram Hobli, Bangalore 37 India. Through Brach Office Nehru Nagar, Near Railway Crossing, Bhilai Nagar, Durg District Durg Chhattisgarh , District : Durg, Chhattisgarh

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For the Applicants	:-	Mr. Syed Majid Ali and Mr. Mohd. Saif Ullah, Advocate
For the respondent	:-	Mr. Samarth Singh Marhas, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor,

C.A.V Order

1. This is the claimants' appeal for enhancement of the amount of compensation awarded by the Claims Tribunal vide award impugned dated 25.02.2015 in Claim Case No.2010/2013, by which an amount of Rs.10,97,000/- was granted as compensation in their favour.

2. The facts in short leading to the disposal of this appeal are that on 27.05.2013 at about 6.40 p.m. the deceased while driving the car bearing registration No. CG 07 1765 was going towards Rajnandgaon along with his companion namely B.K. Sharma, and when he reached near a *Dhaba* (a roadside eatery), the offending vehicle i.e. truck bearing registration No. CG-08-B/2443 driven in a rash and negligent manner and at a highly excessive speed came from behind that too without giving any signal or blowing horn, and hit the car of the deceased, as a result of which it rammed into the vehicle moving ahead bearing registration No. CG-04-ZC/1418 and got crushed badly in between the two. The impact of the accident was so intense that the body of the deceased was required to be taken out after being cut with the help of a welding cutter.

3. The claim was initially instituted seeking compensation of Rs.1,05,50,000/- by the claimants who happen to be his parents, grand parents, younger brother and sisters, and led evidence in support thereof. Learned Tribunal however awarded the compensation quantifying the same at Rs.10,97,000/- as referred to above, which according to the claimants is extremely inadequate and needs to be suitably enhanced. Hence this appeal.

4. Learned counsel for the appellants/claimants submits that the compensation determined by learned Claims Tribunal vide award impugned being extremely on the lower side is required to be suitably enhanced. He submits that apart from the old parents and grand parents of the deceased, his brother and sisters were also fully dependent on him, and his father did not have any independent source of income. He further submits that learned Claims Tribunal has not paid any heed to the fact that just before the accident in question the deceased was selected for the appointment on the post of Constable/Driver in Chhattisgarh Armed Force, District – Dantewada. The future prospects of the deceased, according to the counsel for the appellants/claimants, also does not withstand the test laid down by Hon'ble the Apex Court in catena of decisions and has awarded the compensation in a mechanical manner, which has put the claimants in an extremely financial strait. Counsel for the claimants/appellants submits that looking to the number of dependents which in this case is six, the Tribunal should have taken 1/3rd instead of 1/2 of the income of the deceased towards his personal and living expenses as has been observed by Hon'ble the Apex Court in the matter of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. Reported in (2009) 6 SCC 121 : 2009 (2) ACCD 924 (SC)**. He

submits that keeping in mind that the poor parents have lost their son with a vast carrier building possibility, the compensation should be worked out accordingly so that the claimants could be adequately compensated.

5. On the other hand counsel appearing for the respondent/Insurance Company supports the award impugned and submits that looking to the just and proper quantification of the claim and also the amount given on conventional heads, there is no need for any enhancement in the sum awarded.

6. Heard counsel for the parties and perused the material available on record.

7. From the material available on record in particular the evidence of Subelal Yadav (AW-3) – the eye witness to the accident, it is not in dispute that the car being driven by the deceased at the relevant time had met with an accident after being dashed by the offending vehicle described above. AW-3 has categorically and that too in a graphic manner has described as to how the said accident occurred before his own eyes and how the body was taken out with the help of welding cutter. There is no evidence on record to show that the deceased was also responsible in any manner for the accident in question. On the contrary, it has come in the evidence that the deceased was driving his vehicle at a moderate speed and with all care and caution. It is also not in dispute that the deceased was having a valid and effective driving license to drive the vehicle and therefore, as the vehicle was duly insured with respondent No.3, it is legally obligated to compensate the claimants in a befitting manner.

8. Of course, it is indicated from the evidence of the father of the deceased (AW-1) and one Company Commander namely Vinod Thapa (AW-2) that before his death the deceased was selected for the post of Constable/Driver in Chhattisgarh Armed Forces at Dantewada. It is also indicated from the material on record that after his medical examination being done, he would have got appointment in the said department on the post for which he was selected. Certain papers indicating the salary which the deceased would have got, have also been produced by AW-2. This Court has gone through the said documents as also the evidence to this effect, of AW-1 and AW-2 yet as the deceased met with his unfortunate untimely death before assuming the charge of the post, assessment of his income treating him to be a public servant would neither be possible nor permissible because at that time he had not received even a single salary. If it is assumed for a moment that the papers produced by AW-2 in regard to the income of the deceased yet there are many imponderables which might have taken place in between in long life span of the deceased, cannot be turned a blind eye. In the absence of any cogent and clinching material as to what was the actual income being derived by the deceased, he cannot be substantially treated a Government Servant for working out the loss of income of the deceased. This Court however finds some substance in the argument of the counsel for the claimants that looking to the large number of dependents, the amount being spent for the personal and living expenses of the deceased should not have been taken as 50% of the income. Referring to the observations made by the Apex Court in the case of Sarla Verma (*supra*), learned counsel for the claimants submits that where the family of the bachelor deceased is large and dependent

solely on the income of the deceased himself, as in a case where he had a widowed mother and younger non earning siblings, his personal and living expenses should not always be taken to 50%, rather it can be restricted to 1/3rd and the contribution towards the family in these circumstances should be taken as 2/3rd. Thus, this Court is of the opinion that the amount which the deceased would have spent for maintenance of large number of dependents comes to 2/3rd of his total income in stead of $\frac{1}{2}$, as has been taken by learned Claims Tribunal.

9. It is evident from the record that the deceased used to earn Rs.200/- per day as driver and thus his monthly income has been taken by learned Claims Tribunal as Rs.6,000/- for calculating the compensation receivable by the claimants, which if taken annually comes to Rs.72,000/-. This being a reasonable assessment of his monthly income does not need any reconsideration by this Court. As regards future prospects, as the deceased was not a Government servant, it is safe to take it as 40% which comes to Rs.28,800/-. If this amount is included in the annual income of the deceased, the total loss of annual income comes to Rs.1,00,800/-. Of course, the deceased at the relevant time was bachelor yet looking to the large number of dependents as described above, considering the guidelines given in the decision of Sarla Verma (supra), this Court is of the opinion that learned Tribunal has gone wrong by taking half of the income of the deceased towards his personal and living expenses, which in true spirit of the benevolent provision should have been 1/3rd. If the loss of dependency is calculated this way, the amount out of the annual income of Rs.100,800/-, being spent by the deceased on the dependence comes to Rs.67,200/- and remaining Rs.33,600/- was being spent by the

deceased on himself. As at the time of accident the deceased was aged about 23 years, keeping in mind several judicial pronouncements including the one in the matter of Sarla Verma (supra) the multiplier of 18 has been applied by learned Claims Tribunal to assess total loss of dependency and while doing so the compensation awarded by the Tribunal comes to Rs.12,09,600/- this aspect of the matter also in application of multiplier does not require any meddling by this Court.

10. As regards conventional heads, the amount awarded by learned Claims Tribunal appears to be inadequate and is thus modified as under :-

- Funeral expenses at Rs.25,000/- is left as it is.
- For love and affection, loss of estate etc. to all six claimants – to Rs.1,50,000/- from Rs.1,00,000/-.

In view of above, the total compensation for which the claimants are entitled comes to Rs.13,84,600/-. Since the Tribunal has already awarded Rs.10,97,000, the claimants would be entitled for the enhanced sum of Rs.2,87,600/- which would carry interest @6% per annum from the date of application till realization. Order accordingly.

11. Appeal is thus disposed of with the modifications as above.

Sd/-

Vimla Singh Kapoor
Judge