NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 957 of 2015

Smt. Deshin Bai Nirmalkar W/o Late Hemlal Nirmalkar Aged About 55 Years R/o Ramnangar, Near Muktidham, Supela, Bhilai, District- Durg, Chhattisgarh.

---- Appellant

Versus

1. Balram @ Kalicharan S/o Nandram Verma Aged About 22 Years R/o Infront of Shitala Mandir, Hathkhoj, Bhilai, District- Durg, Chhattisgarh.
2. Thakur Ram Sinha S/o Nandan Sinha Aged About 32 Years R/o Near Durga Manch, Ghasidas Nagar, Bhilai, District- Durg, Chhattisgarh.
3. Divisional/Branch Manager, Office United Insurance Company Limited, Power House Road, Bhilai, Tahsil and District- Durg, Chhattisgrah.

---- Respondents

For Appellant	: Shri Jitendra Gupta, Advocate
For Respondents 1 & 2	: None
For Respondent No. 3	: Shri Pankaj Agrawal, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

01.10.2021

1. Challenge in this appeal is to the impugned award dated 30.04.2015 passed by the Third Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.8 of 2014 whereby learned Claims Tribunal allowed an application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') in part and awarded Rs.5,80,000/- as total compensation in a fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 14.04.2014, at about 18.10 hours, when Rajesh Nirmalkar

was travelling on motorcycle, one Truck bearing No.CG-04/ JB/9291 (hereinafter referred to as 'offending vehicle') dashed motorcycle of Rajesh Nirmalkar and caused accident. In the accident, he suffered grievous injuries, he was taken to District Hospital Durg where he was declared dead.

3. Appellant/claimant, who is widowed mother of Late Rajesh Nirmalkar filed an application under Section 166 of M.V. Act seeking total compensation of Rs.22,37,392/- towards loss of life pleading therein that on the date of accident, late Rajesh Nirmalkar was an able-bodied person, aged about 27 years working as driver with Kiwar Company (Contractor at Municipal Corporation, Bhilai). He was sole bread winner and claimant was dependent upon the income of deceased. Income of deceased was pleaded as Rs.7,528/- per month.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application and denied the facts pleaded therein. It was further pleaded that non-applicant No.1 was possessed with valid and effective driving licence, offending vehicle was insured with non-applicant No.3, as such, liability, if any, to satisfy the compensation would be upon non-applicant No.3/Insurance Company.

5. Non-applicant No.3/Insurance Company submitted its separate reply to claim application, resisting the claim. It was

further 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, hence, Insurance Company is not liable to indemnify the claimant.

6. On appreciation of pleadings, oral and documentary evidence brought on record by the respective parties, Claims Tribunal held that late Rajesh Nirmalkar 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 condition was not found to be proved; upon assessing income of the deceased as Rs.5,000/- per month, calculated amount of compensation and awarded Rs.5,80,000/-.

7. Shri Jitendra Gupta, learned counsel for the appellant/claimant would submit that learned Claims Tribunal erred in awarding meagre amount of compensation. He further submits that learned Claims Tribunal though accepted pleading and evidence with respect to occupation of deceased to be driver, but disbelieved the income of deceased as Rs.7,528/- per month and assessed only Rs.5,000/- per month. It is contended that learned Claims Tribunal erred in applying multiplier of 11 only considering age of claimant i.e. mother of deceased. It is further contended that even if deceased was a bachelor, then also, as per rulings of Hon'ble Supreme Court, application of

multiplier to be based on age of deceased and not parents of deceased. He lastly argued that that learned Claims Tribunal has awarded meagre amount of compensation on other conventional heads.

8. Per contra, Shri Pankaj Agrawal, learned counsel for respondent No.3/Insurance Company supporting the award passed by learned Claims Tribunal, would submit that in absence of proof of income, learned Claims Tribunal justified in assessing the income of deceased on notional basis considering occupation of deceased. He further submits that learned Claims Tribunal has awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference.

9. I have heard learned counsels appearing for the respective parties and perused the record carefully.

10. As this Court is considering the enhancement of amount of compensation awarded by Claims Tribunal based on the submission made by learned counsel for the appellant/claimant placing reliance upon the rulings of Hon'ble Supreme Court, entire amount of compensation is to be recalculated and amount of compensation, if awarded by Claims Tribunal on higher side on any other heads, is also to be scaled down so as to award just compensation.

11. So far as the first submission made by learned counsel for the appellant/claimant with regard to assessment of income of deceased is concerned, perusal of record would show that claimant who is widowed mother has pleaded the occupation of deceased to be of driver, working in Kiwar Company engaged as contractor with Municipal Corporation, Bhilai. Income is pleaded as Rs.7,528/- per month. To prove the pleading with respect to income, claimant-Smt. Deshin Bai Nirmalkar has examined herself as AW-1 and Omkar Singh Nirmalkar as AW-2. Omkar Singh Nirmalkar (AW-2) stated in his evidence that deceased was working as driver with Kiwar Company. True it is that appellant/claimant failed to produce any admissible piece of evidence in support of pleading and statement with respect to income of deceased as Rs.7,528/- per month, then also in view of the object of the Act income is to assessed considering entire facts and evidence.

12. In view of aforementioned facts and circumstances of the case where claimant neither proved the occupation of deceased nor his earning, I do not find any error in assessing income of deceased as Rs.5,000/- per month.

13. So far as second submission made by learned counsel for the appellant/claimant 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."

14. In the aforementioned ruling, Hon'ble Supreme Court has held that in case of death of unmarried person, age of victim/deceased is to 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 11 considering the age of parent of deceased, which is not sustainable and is hereby set aside.

15. In the case at hand, on the date of accident, deceased was bachelor, aged about 27 years, hence, 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 shall be 17, it is ordered accordingly.

16. So far as the award of compensation towards future prospects is concerned, Hon'ble Supreme Court in case of **Sarla Verma (Smt.)** (supra) and **National Insurance Company Limited v. Pranay Sethi and Others** reported in **(2017) 16 SCC 680** has considered the award of future prospects to the victim/deceased. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that where the victim/ deceased was not in a permanent employment, there shall be addition of 40% to the established income towards future prospects. In the case at hand, on the date of accident, deceased was less than 40 years of age and not in permanent employment, hence, in view of ruling of Hon'ble Supreme Court, there will be an addition of 40% of established income to the income of deceased towards future prospects for computing total income of deceased on the date of accident. It is ordered accordingly.

17. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has specified the head on which compensation under other conventional heads is to be awarded, such as, loss of consortium, funeral expenses and loss of estate, further quantified the compensation for each head as Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively. Types of 'consortium' has been subsequently explained by the Apex Court in **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**, to be of three types; (i) spousal consortium (payable to the surviving spouse because of the death of the partner); (ii) parental consortium (payable to children because of the death of parents) and (iii) filial consortium (payable to the parents because of the death of children). Hence, appellant will be entitled for the compensation on other conventional heads as held by Hon'ble Supreme Court in aforementioned rulings.

18. For the aforementioned reasons and discussions, the amount of compensation awarded by learned Claims Tribunal to the claimants requires re-consideration and re-computation, which is as under :

Income of deceased is assessed as Rs.5,000/- per month and Rs.60,000/- per annum. By adding 40% of established income towards future prospects, total annual income of deceased will come to Rs.84,000/- (60,000 x 40%

= 24,000 and 60,000 + 24,000). Upon deducting 50% (1/2) towards personal and living expenses, annual loss of dependency will be Rs.42,000/- (84,000 / 2). Upon applying multiplier of 17 to annual loss of dependency, total loss of dependency will come to Rs.7,14,000/- (42,000 x 17).

Apart from above amount of compensation towards loss of dependency, appellant/claimant is further entitled for a sum of Rs.40,000/- towards loss of filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of funeral expenses.

19. Now, appellant/claimant is entitled for total compensation of Rs.7,84,000/- (7,14,000 + 40,000 + 15,000 + 15,000) instead of Rs.5,80,000/- as awarded by learned Claims Tribunal. Amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. Other conditions of the impugned award shall remain intact.

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

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh