(2020) 05 CHH CK 0021

In the Chhattisgarh High Court

Case No : MAC No. 442 Of 2013

Panna Lal Chandrakar — APPELLANT

Vs

Deepak Yadav And Ors — RESPONDENT

Date of Decision : 19-05-2020

Acts Referred:
Indian Penal Code, 1860 — Section 279, 304A, 337, 338

Citation : (2020) 05 CHH CK 0021

Hon'ble Judges : Parth Prateem Sahu, J

Bench : Single Bench

Advocate : Shivendu Pandya, Pankaj Agrawal

Final Decision : Allowed

Judgement

@JUDGMENT-JUDGMENT

Parth Prateem Sahu, J

1. Challenge in this appeal is to the impugned award dated 15-01-2013 passed by the learned 4th Additional Motor Accident Claims Tribunal, Raipur in

claim case No. 23/2012 whereby learned Claims Tribunal allowed claim application in part and awarded total sum of Rs. 7,00,268/- as compensation in

a death case.

2. Relevant facts for disposal of this appeal are that on 24-10-2010 at about 2:30 AM in the mid night, one Maruti Van bearing registration No. CG 06

C 0171 (hereinafter referred to as ""offending vehicle"") dashed motor cycle of Arun Chandrakar (deceased) on which Arun Chandrakar and Vishnu

Kashyap was traveling. On account of the aforementioned accident, Arun Chandrakar succumbed to the accidental injuries suffered by him. The

accident was reported to the concerned police station based on which crime was registered against respondent No. 1/ non-applicant No. 1 driver of

the offending vehicle for offences punishable under Sections 279, 337, 338 and 304A of IPC. The claimants who are parents of the deceased filed

claim application claiming compensation on account of untimely death of their son in a motor accident. In claim application they have claimed a total

sum of Rs. 42,75,800/- mentioning therein that on the date of accident deceased was a Govt. servant and working as Constable in police department

and earning Rs. 9,655/- per month.

3. Respondent No. 1 and 2/ non-applicant No. 1 and 2 driver and owner of the offending vehicle submitted reply to the claim application and denied all

the adverse pleadings made against them. It was pleaded that there was misjoinder of the party and on account of which the claim application itself is

not maintainable. It was further pleaded that on the date of accident offending vehicle was insured with non-applicant No. 3/ respondent no. 3-

Insurance Company and the liability, if any, would be on Insurance Company.

4. Non-applicant No. 3/ respondent No. 3-Insurance Company submitted reply to the claim application and denied all the adverse pleadings made in

the claim application and further pleaded that on the date of accident, respondent No. 1/ non-applicant No. 1 driver of the offending vehicle was not

possessing valid and effective driving licence to drive the vehicle, there was violation of conditions of 3 of 7 MAC No. 442 of 2013 insurance policy;

further, driver, owner and insurance company of the other vehicle No. CG 10 EF 5341 which was also involved in the accident have not been arrayed

in the party array and there was contributory negligence on the part of the deceased as well.

5. The learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties has arrived at a finding that

deceased Arun Chandrakar died on account of motor accident, respondent No. 1/ non-applicant No. 1 driver of the offending vehicle drove the

offending vehicle rashly and negligently; there was no contributory negligence in the accident and further that there was no violation of conditions of

insurance policy and awarded sum of Rs. 7,00,268/- as compensation along with interest @6% p.a. from the date of filing of claim application.

6. Learned counsel for the appellants-claimants submits that the learned Claims Tribunal committed error in applying multiplier for calculating the

amount of compensation considering the age of the parents of the deceased whereas as per the law laid down by the Hon'ble Supreme Court and

even when the deceased was a bachelor, the age of the deceased is required to be considered for the purpose of applying the multiplier for calculating

the amount of compensation. It is further contended that learned Claims Tribunal erred in not adding any amount towards future prospects to the

income of the deceased. He places his reliance in the matter of National Insurance Company Ltd. vs. Pranay Sethi reported in (2017) 16 SCC 68 0to

support his submission.

7. Per contra, learned counsel appearing for respondent No. 3-Insurance Company submits that in the facts and circumstances of the case, the

learned Claims Tribunal awarded just and proper amount of compensation and further that the learned Claims Tribunal has taken note of the judgment

passed by the Supreme 4 of 7 MAC No. 442 of 2013 Court in the matter ofS arla Verma & others v. Delhi Transport Corp. & Anr reported in (2009)

6 SCC 121, while passing the impugned award. In view of the aforementioned submissions, he submits that the amount of compensation awarded by

the learned Claims Tribunal is just and proper and needs no interference.

8. I have heard learned counsel appearing for the respective parties and perused the record.

9. The only point for consideration before this Court is whether the Claims Tribunal has applied correct multiplier in this case, where on the date of

accident age of the deceased was about 25 years and whether the appellants-claimants are entitled for any additional amount towards future

prospects for the purpose of assessing the income of the deceased for calculating the amount of compensation. So far as the first ground raised by the

learned counsel for the appellant that learned Claims Tribunal erred in applying the multiplier on lower side taking into consideration the age of the

parents of the deceased is concerned. This issue has been decided by the Hon'ble Supreme Court in the matter of Sube Singh v. Shyam Singh

reported in (2018) 3 SCC 18 wherein the Supreme Court while taking note of the earlier judgments of Sarla Verma case (supra) and Munna Lal Jain

& Anr vs Vipin Kumar Sharma & Ors reported in (2015) 6 SCC 347 has held thus:

4. ...The legal position, however, is no more res integra. In Munna Lal Jain, [(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. We may usefully refer to the exposition in paras

11 and 12 of the reported decision, which read thus: (Munna Lal Jain case, SCC pp. 351-52) ""11. The remaining question is only on multiplier.

The High Court (Munna Lal Jain v. Vipin Kumar Sharma, 2012 SCC OnLine Del 4540)following 5 of 7 MAC No. 442 of 2013 Santosh Devi,[

Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 42]1 has taken 13 as the multiplier. Whether the multiplier should depend on the age of

the dependents or that of the deceased, has been hanging fire for some time; but that has been given a quietus by another three-Judge Bench decision

in Reshma Kumari, [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65]. It 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 dependents 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

case, SCC p. 88, para 36) '36. In Sarla Verma, (2009) 6 SCC 121, 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

case 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 dependents. 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

case.'

12. In Sarla Verma case at para 19 a two-Judge Bench dealt with this aspect in Step 2. To quote: (SCC p. 133) '19. ... 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 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.'

10. In view of he facts of the case, that the appellants-claimants are parents of the deceased, on the date of accident, age of the deceased was 25

years and also taking note of the judgment of the Supreme Court in the matter of Sube Singh (supra), the learned Claims Tribunal erred in applying the

multiplier of 13. In the aforementioned case law, the Hon'ble Supreme Court has held that the multiplier to be applied, considering the age of the

deceased and not the age of the dependents of the deceased. For the foregoing reasons, the proper multiplier in the facts and circumstances of the

case would be 18 as held by the Hon'ble Supreme Court in the matter of Sarla Verma (supra). So far as the second submission made by the learned

counsel for the appellant that the learned Claims Tribunal erred in not adding any amount towards future prospects is concerned. This issue has been

considered and dealt with by the Supreme Court in the matter of Pranay Sethi (supra) and held thus:

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased

had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to

50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less

tax

11. In the case at hand, the income of the deceased has been held to be proved by the learned Claims Tribunal as Rs. 9,655/- per month i.e. Rs.

1,15,860/- per annum. So far as, on the date of accident, the deceased was a Government servant and working as Constable in police department and

looking to the age of the deceased on the date of accident i.e. 25 years, there will be an addition of 50% of the established income towards future

prospects. In view of the above, the amount awarded by the learned Claims Tribunal to the appellants- claimants requires reconsideration and

recalculation which is work out as under.

12. The income of the deceased has been found to be proved as Rs. 9,655/- per month i.e. Rs. 1,15,860/- per annum. The deceased on the date of

accident was aged 25 years. In view of the law laid down by the Supreme Court in the case of Pranay Sethi (supra), there will be addition of 50% of

the income which makes the monthly income of the deceased as Rs. 14,482.5/- [Rs. 9655+50% of Rs. 9655], rounding off the amount comes to Rs.

14,483/- which makes yearly income as Rs. 1,73,796/-. On the date of accident, deceased was unmarried and therefore there will be deduction of Â½

towards personal and living expenses which makes the yearly loss of dependency as Rs. 86,898/- Looking to the age of the deceased i.e. 25 years, as

per the law laid down by the Supreme Court in Sarla Verma case the appropriate multiplier to be applied is 18. After applying the multiplier of 18 to

yearly loss of dependency, the total loss of dependency comes to Rs. 15,64,164/- [Rs. 86898 x 18]. Apart from the above the appellants-claimants will

further be entitled for a total sum of Rs. 15,000/- towards funeral expenses and Rs. 15,000/- towards loss of estate. Now the appellants-claimants are

entitled for a total sum of Rs. 15,94,164/- [Rs. 15,64,164 + Rs. 15,000 + Rs. 15,000] towards compensation instead of Rs. 7,00,268/-. The amount of

compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Other conditions mentioned in the impugned

award will remain intact.

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