

**(2016) 04 JH CK 0172**  
**In the Jharkhand High Court**  
**Case No : M.A. No. 95 of 2012.**

**Ram Awatar Lal Agrawal @ Ram Awtar Lal Agarwal S/o late Peyare Lal  
Agarwal - Appellant/Claimant @HASH Mrs. Ruchi Jain, W/o Rohit Jain R/  
o 292 Anandpuri, P.O and P.S. Anandpuri Distt. Kanpur, U.P. /O.P.**

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**Date of Decision :** 26-04-2016

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2016) 4 JCR 70

**Hon'ble Judges :** Amitav K. Gupta, J.

**Bench :** Single Bench

**Advocate :** Mr. Shahid Khan and Md. Razaullah Ansari, Advocates, for the Appellant; Mr. Pratyush Kr., Advocate, for the Respondent No. 2

**Final Decision :** Allowed

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## Judgement

Mr. Amitav K. Gupta, J. - This appeal has been preferred for enhancement of the compensation award of Rs. 3,56,700/- by order dated 30/03/2012, in Claim case No. No. 137/2006, passed by the District Judge-cum-Presiding Officer, Motor Vehicle Accident Claims Tribunal (hereinafter to be referred as Tribunal) to be paid to claimants/appellants, dependents of deceased Nitin Agrawal, by the respondent/opposite party No. 2, National Insurance Company, Ltd.

2. Mr. Shahid Khan, learned counsel for the appellant has submitted that the learned Tribunal has failed to appreciate that the deceased, Nitin Agrawal, was aged about 26 years. The deceased had filed his income tax return of Rs. 1,42,857/- for the assessment year 2004-05. That it is settled principle that while computing the compensation the multiplier applicable should be the age of the deceased. It is urged that the tribunal has erred in applying the multiplier on the basis of the age of the dependents parents. It is urged that compensation should have been computed by applying the multiplier of 17 since deceased was aged 26 as per the decision of the Hon'ble Supreme Court in the case of Amrit Bhanu Shali and ors. v. National Insurance Co. Ltd. reported in (2012) 4 SC 116. It is urged that the tribunal has not considered the future prospects and 30% of

the income should have been added as future prospects for assessing the actual income of the deceased. That the tribunal has erred in deducting 50% of the compensation towards contributory negligence in the accident. It is contended that there is no material evidence on record to support the finding of the Tribunal that it was a case of contributory negligence. It is submitted that paltry amount of Rs. 10,000/- and Rs. 5,000/- has been allowed towards loss of love and affection and funeral expenses.

On the above grounds learned counsel for the appellant has submitted that no interest has been awarded and the compensation amount should be enhanced with interest payable from the date of application.

3. Per-contra, Mr. Pratyush Kumar, learned counsel for the National Insurance Co. Ltd., has contended that the Tribunal has considered the police report, wherein the police authority has noted that there was smell of alcohol at the place of occurrence and the circumstances indicate that the deceased and the driver of the Esteem car must have been under the influence of alcohol which resulted in the accident on account of rash and negligent driving. The Tribunal has considered the material facts and rightly held that there was contributory negligence on the part of the driver. It is submitted that there is evidence on record that the car had hit and drove through the boundary wall on the land adjacent to the national highway. After investigation Police has submitted charge-sheet against the driver of the vehicle and witnesses, namely, C.W.-3 and C.W.2 have stated that the vehicle was being driven rashly and negligently. It is argued that as per the recital of the F.I.R the deceased along with his friends had gone on a pleasure trip and the accident took place due to the negligence of the driver. That the Tribunal has rightly deducted 10% of the salary towards income tax as the income of the deceased was in the taxable slab during the relevant year. It is argued that the Tribunal should have deducted 50% of the income as the expenses the deceased would have spent on himself because the deceased was a bachelor but the Tribunal has taken a liberal view and deducted only 10% of the income. It is further submitted that the appellants have prayed for enhancement of compensation by applying the multiplier of 17 but in the memo of appeal they have categorically pleaded that the compensation be enhanced by using the multiplier of 13 and such prayer is not tenable.

4. Heard. The contention of the learned counsel for the respondent/insurance company that the multiplier should be the age of the dependent parents as the deceased had died a bachelor is not acceptable, in view of the decision in the case of Amrit Bhanu Shali(supra), wherein Hon"ble Supreme Court has considered and discussed the ratio laid down in the case of Sarla Verma and held in paragraph nos. 17 & 18 as follows :-

"17 The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and therefore, the age of dependents has no nexus with the computation of compensation.

"18 In the case of Sarla Verma (supra) this court held that the multiplier to be used should be as mentioned in Column(4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13."

(emphasis supplied)

5. The argument advanced by the learned counsel for the respondent, that the tribunal has rightly held that the accident was due to contributory negligence of the deceased as they were driving the vehicle under the influence of alcohol/ liquor and the police had found smell of alcohol at the place of accident is not sustainable because as per the postmortem report no alcoholic content was found in the stomach of the deceased. From the charge-sheet it is amply clear that the deceased was not driver of the said vehicle rather it was one Ritesh Kr. Jain, who was driving the vehicle against whom the charge-sheet has been submitted. The insurance company has also not produced the surveyor report in the court below to substantiate the factum of contributory negligence of the deceased in the accident. There is no finding that any liquor bottles were seized or found in the car or the driver was driving the vehicle under the influence of liquor. Accordingly, the finding of contributory negligence by the Tribunal is not sustainable. The income tax return of Rs. 1,42,857/- i.e. approximately 1,43,000/-, for the assessment year 2004-05 was filed by the deceased. In view of the decision of the Hon"ble Supreme Court rendered in the case of Sarla Verma and ors. v. Delhi Transport Corporation and anr. reported in (2009) 6 SCC 121, the Tribunal should have added 30% of the income towards the future prospects. On addition of 30% to annual income of Rs. 1,43,000/- as future prospects, the gross income is assessed at Rs. 1,43,000+42,900=Rs.1,85,900/-. After deducting 10% towards the income tax, the gross income is computed at 1,85,900-18590=Rs.1,67,310.

The age of the deceased was 26 years, accordingly, in view of the decision in the case of Amrit Bhanu Shali (supra) the multiplier applicable should be 17, accordingly, the total income on computation comes to Rs. 1,67,310X17=Rs.28,44,270/-. Admittedly, the deceased was a bachelor, hence 50% is deducted towards his personal expenses, consequently, the loss of dependency is assessed at Rs. 14,22,135/-. A lumpsum amount of Rs. 50,000/- is provided towards loss of love and affection and funeral expenses. Accordingly, compensation payable is computed at Rs. 14,22,135+50,000=Rs.14,72,135/-, with interest @ 9% payable from the date of the order of the trial court till realisation of the amount.

6. The respondent-insurance company is directed to pay the aforesaid amount, minus the amount if any paid as interim compensation under Section 140 of the M.V. Act, by the ensuing Lok Adalat i.e. on 14.5.2016.

7. With the said direction and observations the award/judgment of the Tribunal is set aside and modified to the extent as noted above.
8. In the result this appeal is hereby allowed.