

(2014) 05 AHC CK 0156

In the Allahabad High Court

Case No : First Appeal From Order No. 236 of 2010 and First Appeal From Order Defective No. 1006 of 2010

United India Insurance Co. Ltd.

APPELLANT

Vs

Rajendra Pratap Singh

RESPONDENT

Date of Decision : 29-05-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(7)
Civil Procedure Code, 1908 (CPC) — Section 34
Interest Act, 1978 — Section 3
Minimum Wages Act, 1948 — Section 3
Motor Vehicles Act, 1988 — Section 140, 163A, 163-A, 163A(3), 163-A(3)
Penal Code, 1860 (IPC) — Section 279, 302
Workmens Compensation Act, 1923 — Section 4(A)(3)

Citation : (2014) 4 ACC 265 : (2014) 5 ADJ 607 : (2014) 6 ALJ 139 : (2015) 2 AnWR 174

Hon'ble Judges : Devi Prasad Singh, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : U.P.S. Kushwaha, Advocate for the Appellant; Arun Kumar Pandey, Arun K. Pandey, I.M. Panday, I.P. Singh, Radhey Shyam Tiwari and S.K. Pandey, Advocate for the Respondent

Judgement

Ashwani Kumar Mishra, J.—Instant appeals have been filed challenging the judgment and order dated 17.11.2009, passed by Motor Accident Claims Tribunal/ VII Additional District Judge, Faizabad in M.A.C.P. No. 137 of 2007 (Rajendra Pratap Singh and another v. Rajaband Khan and others) filed u/s 166 of Motor Vehicle Act, 1988. While insurance company has challenged the determination of compensation, the claimants have sought enhancement over and above the amount awarded, as such, both the appeals have been heard together and are being disposed of by this common judgment. On 27.5.2007 at 9.00 p.m., an accident occurred wherein motorcycle bearing registration No. UP 42K 3931, upon which deceased and two others were traveling, got hit by Jeep bearing registration No. U.P. 42A 3122, resulting in grievous injuries caused to Vipin

Kumar, who died as a consequence thereof. The motorcycle was being driven by the uncle of the deceased, namely Jitendra Pratap Singh, who also died in the same accident. The other rider of the motorcycle, Mata Baksh Singh, father-in-law of the deceased, also sustained injuries. It is claimed that while the motorcycle with three riders traveling from village Manodeeh towards Amaniganj reached at the intersection of metalled road and culvert over dry canal, it was hit near village Satnapur by the Jeep bearing registration No. U.P. 42A 3122 due to rash and negligent driving of the Jeep. Jitendra Pratap Singh, who was driving the motorcycle, died on spot. Vipin Kumar fell in the canal lying dry, and he was taken out by others and sent to the district hospital, where he died. The deceased was 24 years of age and is claimed to be working as a skilled worker with M/s. Laxmi Diamond Company, Amreli, Gujarat, from where he was alleged to be drawing salary of Rs. 10,000/- per month. The claim under different heads amounting to Rs. 30,00,000/- has been instituted by the claimants, who are the parents of the deceased, against the owner of the Jeep, Insurance Company and its driver, who have been arrayed as respondent Nos. 1, 2 and 3 respectively in the claim petition.

2. Notices were issued in the claim petition and the owner denied the factum of accident with his Jeep. The Insurance Company also filed its written statement denying the accident. However, the fact that the Jeep was insured with the company has been admitted. The tribunal framed following issues on 18.12.2008:

(i) Whether on account of rash and negligent driving of Jeep bearing registration No. U.P. 42A 3122 the accident occurred at 9.00 p.m. on 17.5.2007, resulting in death of Vipin Kumar due to injuries sustained in the accident?

(ii) Whether the claim is bad on account of non-impleadment of motorcycle owner and its insurance company?

(iii) Whether the driver of the Jeep on the relevant date possessed valid driving licence?

(iv) Whether the Jeep bearing registration No. UP 42A 3122 was insured with United India Insurance Company and if it was so, then to what consequence?

(v) Claimants are entitled to how much compensation and from whom?

3. The claimants filed documentary evidence in the form of F.I.R., charge-sheet submitted by the police after investigation, certified copy of site-plan, postmortem report, certificate of employment of deceased Vipin Kumar with M/s. Laxmi Diamond Company and the certificate of income issued by the company.

4. The respondents filed driving licence of the driver and registration certificate of the Jeep.

5. Oral evidence of Ram Bahadur Singh, Mata Baksh Singh son of Badalu Singh and Rajendra Pratap Singh son of Dalbahadur Singh were led on behalf of the claimants as C.P.W. 1, C.P.W. 2 and C.P.W. 3 respectively. On behalf of the

respondents oral evidence of Shitala Prasad son of Siddh Ram Pandey as O.P.W. 1 was adduced.

6. Tribunal, on issue No. 1, considered the oral and documentary evidence brought on record and came to the conclusion that the accident was caused due to rash and negligent driving of the Jeep, resulting in death of deceased Vipin Kumar due to serious injuries received in the accident. Issue No. 2 was decided by holding that necessary parties already exists on record for disposal of claim. Finding on issue No. 3 was returned by the tribunal to the effect that the driver possessed a valid driving licence and issue No. 4 was decided holding that the Jeep was insured with the Insurance Company. On issue No. 5 the tribunal found that the certificate adduced by the claimants to show that deceased was employed as a skilled worker with M/s. Laxmi Diamond Company was not proved according to law. However, the tribunal found the deceased to be skilled worker and then it proceeded to treat his daily earning as being not less than Rs. 150/- per day and after deducting five days leave, monthly wages was worked out to Rs. $150 \times 25 = 3,750/-$ per month, 1/3rd towards personal expenses were deducted. By applying the multiplier of 17, the tribunal worked out the amount of compensation for loss of life as Rs. 5,10,000/-, upon which a further sum of Rs. 2,000/- for funeral expenses, Rs. 2,000/- for loss of estate and Rs. 2,000/- for case expenses, was added, totaling compensation payable to the claimants at Rs. 5,17,000/-. The claimants were also held entitled for payment of interest at the rate of 8% per annum from the date of filing of claim petition. Challenging the determination, Insurance Company filed F.A.F.O. No. 236 of 2010, whereas the claimants sought enhancement of compensation in their F.A.F.O. No. 1006 of 2010.

7. In F.A.F.O. No. 236 of 2010, the Insurance Company has assailed the award of the tribunal on the following grounds; the Jeep, insured with the company, was not involved in the accident and the presence of the witnesses, who have testified in support of claim, were highly doubtful and the Jeep driver had also denied the accident with his vehicle; alternatively, the factum of three riders on the motorcycle was admitted as against two permissible in law, which leads to obvious inference that vehicle itself had turned unstable causing accident and, therefore, contributory negligence of motorcycle owner was apparent on record but this aspect has been omitted from consideration rendering the award bad in eye of law; that there was no legally admissible evidence existing on record to show that the deceased was a skilled worker or that he was gainfully employed, and in absence thereof, notional income of Rs. 15,000/- per annum alone could be considered after necessary deduction towards personal expenses, by applying correct multiplier and the tribunal awarded excessive compensation without any material on record; it was also urged by the learned counsel for the Insurance Company that the notional income contemplated under the Act was specified in the schedule to the Act itself and it was not open for the tribunal to ignore the notional income specified in the schedule especially, in the absence of any amendment by the legislature and consequently the quantum of compensation

determined has been assailed. It was stated that the multiplier according to the age of parents admissible was only 15 and, it has wrongly been assessed as 17 by erroneously relying upon the age of the deceased.

8. On the contrary, the claimants have supported the finding of the tribunal on issue No. 1 to 4 and the finding on issue No. 5 regarding grant of relief the claimants submit that income of deceased as Rs. 10,000/- per month was liable to have been accepted for determining compensation and the compensation deserves to be adequately enhanced. The multiplier of 18 was required to have been applied and interest at the rate of 9% from the date of filing of claim was liable to be awarded. It was also contended that the determination made by the tribunal was much below the amount admissible/payable to the claimants and the claimants are entitled to enhanced compensation.

9. We have heard learned counsel for the claimants as well as learned counsel for the respondent Insurance Company and have perused the material brought on record.

10. From the material brought on record, it appears that the accident in the manner is claimed to have occurred at 9.00 p.m., when the motorcycle reached western end of culvert over dry canal and it was hit by the speeding Jeep coming from the other side. After the accident, the Jeep appeared to have overturned and was taken in police custody. Two persons riding on the motorcycle died as a result of the accident while third passenger on the motorcycle sustained serious injuries. The finding of rash and negligent driving of the Jeep driver is also supported by applying the principle of *res ipsa loquitur*.

11. The Jeep was later claimed by its owner from police. The F.I.R. lodged mentioned the same registration number of the Jeep as the vehicle causing accident due to rash and negligent driving. The driver was also bailed out after 2-3 days of the incident. The police after investigation submitted a charge-sheet against the driver of the Jeep for rash and negligent driving, found proved in the investigation. The oral witnesses also supported the claim and no inconsistency in the case was noticed. The principles of *res ipsa loquitur* also seems to apply in the facts of the present case. The finding of the tribunal that accident was caused by the Jeep bearing registration No. U.P. 42A 3122 is thus perfectly valid and the feeble attempt to question involvement of Jeep in question has rightly been rejected.

12. The insurance company has then submitted that as per the claim itself, three persons were sitting on the motorcycle, which was not permitted in law. It is further submitted that the motorcycle itself appeared to have lost its balance due to unauthorized passenger and, therefore, contributory negligence on part of the motorcycle owner was liable to have been allowed. We have examined this argument. The consistent case of all the three witnesses adduced on behalf of the claimants was to the effect that the Jeep was being driven rashly and negligently. Even the police upon investigation found the Jeep driver guilty of

rash and negligent driving and a charge-sheet against the driver of the Jeep has been filed. The claimants, therefore, have discharged the initial onus of proving rash and negligent driving of the Jeep. We have also taken note of the fact that after the accident, the Jeep had overturned, which also supports the version of the claimants' witnesses that Jeep was being driven at a high speed in a rash and negligent manner. The record further shows that insurance company had not produced any rebuttal evidence to show that there was contributory negligence on part of the driver of the motorcycle.

13. In *Usha Rajkhowa and Others Vs. Paramount Industries and Others*, dealing with a issue of contributory negligence, Hon"ble Supreme Court observed as under in para. 19, 20, 21 and 22 of the said judgment:

19. Under such circumstances, applying the doctrine of *res ipsa loquitur*, it is clear that it was because of the negligence on the part of the truck that the accident took place. After all the hit given by the truck was so powerful that two persons in the car died on the spot, while the third escaped with serious injuries. When we see the award of the Tribunal, as also the appellate judgment, they are astonishingly silent on these aspects. We are, therefore, convinced that there was no question of any contributory negligence on the part of the driver of the Maruti car and it was solely because of the negligence on the part of the truck that the accident took place.

20. The question of contributory negligence on the part of the driver in case of collision was considered by this Court in *Pramod Kumar Rasikbhai Jhaveri v. Karmasey Kunvargi Takl*. That was also a case of collision between a car and a truck. It was observed in SCC p. 458, para. 8:

8. ...The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as "negligence". Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong".

21. This Court further relied on an observation of the High Court of Australia in *Astley v. Austrust Ltd.*, to the following effect:

A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory

negligence; in other cases, the nature of the duty may reduce the plaintiffs share of responsibility for the damage suffered; and in yet other cases, the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property.

22. Keeping these principles in mind, we find that there was absolutely no evidence to suggest that there was any failure on the part of the car driver to take any particular care or that he had breached his duty in any manner.--The insurance company has obviously failed to discharge its burden. We, therefore, respectfully follow the abovementioned judgment.

14. The only factum of three persons sitting occupants on the motorcycle does not ipso facto establish contributory negligence of the driver of the motorcycle. There was no positive evidence, indicating contributory negligence on part of the driver of the motorcycle, placed on record by the insurance company and as such its plea of contributory negligence was rightly rejected by the tribunal. The onus to prove contributory negligence in the instant case was upon the insurance company and as it had not led any evidence to prove it, nor any material on record otherwise existed to draw inference in this regard, the plea of contributory negligence is to be rejected.

15. In *Minu Rout and Another Vs. Satya Pradyumna Mohapatra and Others*, dealing with a issue on contributory negligence, Hon''ble Supreme Court held as under in para. 17 and 18 of the said judgment:

17. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge-sheet, Ext. 1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. The Tribunal ought to have seen that non-production of FIR has no consequence for the reason that charge-sheet was filed against the truck driver for the offences punishable u/s 279 read with Section 302 IPC read with the provisions of the MV Act. The Insurance Company, though claimed permission u/s 170(b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eyewitness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet, Ext. 1 in which the deceased driver was mentioned as an accused

and on his death his name was deleted from the charge-sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW 2 and PW 3 in their cross-examination and placed reliance on them to record the finding on Issue 1.

18. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious Issue 1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law. The Tribunal has accepted the part of oral evidence of the eye-witnesses regarding the scene of accident and it has erroneously placed reliance upon the charge-sheet, Ext. 1, which was filed against the driver of the offending truck and the deceased to hold that there was contributory negligence on his part by ignoring the fact that the criminal case against the deceased was abated. Therefore, we have to hold that the finding of fact recorded on Issue 1 by the Tribunal and affirmed by the High Court in the impugned judgment 1, is erroneous for want of proper consideration of pleadings and legal evidence by both of them. Accordingly, we have answered Point 1 in favour of the appellants insofar as the finding recorded by the Tribunal on the question of contributory negligence of 50% on the part of the deceased is concerned.

16. We now proceed to examine as to whether the compensation awarded by the tribunal is excessive, as claimed by the insurance company or inadequate as alleged by claimants, and then determine the just compensation payable in the matter.

17. The tribunal has taken note of the certificates produced by the claimants showing that the deceased was employed as a skilled worker in M/s. Laxmi Diamond Company and that he was drawing salary of Rs. 10,000/- per month. The tribunal proceeded to hold that the income certificate was not proved, as none from the employer was adduced to prove it. Tribunal, therefore, proceeded to determine the income of the deceased on the premise that being a skilled worker, he could not be expected to earn less than Rs. 150/- per day and after adjusting five days leave, tribunal proceeded to treat his monthly income as Rs. $150 \times 25 = 3,750/-$. The parties are at issue on this aspect. While insurance company submits that no evidence of deceased, being a skilled worker, was on record, the claimants allege that income of Rs. 10,000/- per month was proved, which ought to have formed basis determining compensation.

18. Before the tribunal, paper No. 38C-1/1, original certificate of M/s. Laxmi Diamond Company, was brought on record, which certified the income of deceased of Rs. 10,000/- per month. Desirability to prove the certificate by adducing witnesses of the employer cannot be doubted. However, the learned counsel for the claimants submit that the employer was based at Gujarat and it was not possible to adduce employer as a witness in the matter. Although, the submission that employer based at Gujarat may not like to travel all the way to

Faizabad in Uttar Pradesh to testify income of the deceased, may appear to have substance but this practical difficulty cannot do away with the requirement of proving the income of the deceased by adducing cogent evidence. The income certificate was not supported by producing employer's witness or any other material. We, therefore, do not find fault with the view taken by the tribunal that income of Rs. 10,000/- of the deceased was not established.

19. The claimants nevertheless on the strength of certificate of income and employment supported their claim by adducing oral evidence to the effect that the deceased was a skilled worker. The oral evidence alongwith certificate of employment has not been controverted by any evidence to the contrary by the insurance company. No evidence/material has been brought on record to suggest that the deceased was not a skilled worker or that he was an unskilled worker. Upon assessment of evidence on record, the finding returned by the tribunal that deceased was a skilled worker is borne out from the record and challenge made by the insurance company in this Court lacks merit and is rejected.

20. Provisions of Motor Vehicles Act, 1988, dealing with award of compensation is essentially in the nature of a welfare legislation. Section 168 of the Act requires the tribunal to hold an enquiry into the claim for award of compensation and make an award determining the amount of compensation which appears to it to be just. Such assessment of compensation, in order to qualify the requirement of being just must take into consideration ground realities.

21. In the instant case, tribunal has treated the wages of a skilled worker to be Rs. 150/- per day and after providing leave of five days in a month and determined the monthly wages at Rs. 3,750/- per day.

22. The counsel for the insurance company has stressed that notional income of Rs. 15,000/- p.a. provided in IInd Schedule to Section 163-A alone is to be resorted to in the instant case and the determination of tribunal is illegal.

23. The aforesaid argument regarding wages of skilled worker in the absence of proof of income by appellant-insurance company as Rs. 15,000/- per month is noticed only to be rejected. The IInd Schedule, which is referable to Section 163-A of the Act, provide for compensation on structured formula basis. Section 163-A has been introduced by the legislature vide Act No. 54 of 1994 with effect to 14.11.1994. The object of the amending Act was to provide for speedy compensation even where allegation of wrongful neglect or default of the owner, was not pleaded or established. The provisions of Section 163-A introducing the IInd Schedule are not to be scrupulously followed in a claim u/s 166 of Act. In *Puttama and others v. K.L. Narayana Reddy and another* in Civil Appeal No. 10918 of 2013 decided on 9.12.2013, Hon"ble Supreme Court held as under in para. 28 and 29 of the said judgment:

28. In *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, this Court compared Section 163A with Section 166 of the Act, 1988 and reiterated that the principles relating to determination of liability and quantum of

compensation were different for the claims u/s 163A and claims made u/s 166.

29. Thus it will be evident from the provisions of the Act that the structured formula as prescribed under Second Schedule and the multiplier mentioned therein is not binding for claims u/s 166 of the Act, 1988.

24. Hon''ble Supreme Court in Puttama (supra) also took note of the fact that determination of notional income of Rs. 15,000/- p.a. was introduced by the Parliament in the year 1994 and on account of fall in the value of rupee the notional income was required to be revised upwardly. It was also noticed that amendment to the Act has already been proposed and after it was passed by Rajya Sabha on 8.5.2012, the bill is pending in Lok Sabha. Following observations were made in para. 51, 52, 53 and 56 of the said judgment:

51. Considering the current trend of inflation cost of food grains and all other items, Mr. P.P. Malhotra, Senior Advocate, Amicus Curiae submitted that for just compensation the multiplier should be enhanced to 24-25 years. Further, according to him, while calculating the compensation, the amount payable towards dependency should be increased as the life expectancy is upto 70-75 years and secondly after 10 years of earning capacity it should be doubled in view of escalation of cost of living and progressive increase in the income.

52. Keeping in view the cost of living, the Central Government is required to amend the Second Schedule See Section 163A(3). The Second Schedule was enacted by Act 54 of 1994 w.e.f. 14th November. Now more than 19 years have passed but no amendment has been made. Cost of living has gone up many fold.

53. In view of finding recorded above, we hold that Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.

56. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed u/s 163A of the Act, 1988.

25. The amount of Rs. 15,000/-, therefore, cannot be treated to be income of a skilled worker in a claim made u/s 166 of the Act, in light of the law laid down by Hon"ble Supreme Court. The determination of just compensation, therefore, must involve an exercise to find out as to what would be the reasonable income of a skilled person. In *Minu Rout* (supra), Hon"ble Supreme Court was dealing with a claim u/s 166 of the Act of a driver, where Rs. 5,000/- per month was claimed. Hon"ble Supreme Court took judicial note of the fact that the post of a driver is skilled one and his salary ought to have been assessed at Rs. 6,000/- per month. However, future prospects were also held admissible in light of law laid down in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, ; *Santosh Devi Vs. National Insurance Company Ltd. and Others*, and *Reshma Kumari and Others Vs. Madan Mohan and Another*, of the judgment in *Minu Rout* (supra) is reproduced:

20. The Tribunal ought to have taken the salary of the deceased driver at Rs. 6000 by taking judicial notice of the fact that the post of a driver is a skilled job. Though the claim of the appellants is Rs. 5000 as monthly salary of the deceased for the purpose of determining the loss of dependency, the actual entitlement of the salary of the deceased should have been taken at Rs. 6000 per month by the Tribunal for awarding just and reasonable compensation, which is the statutory duty of the Tribunal and the appellate Court. In view of the law laid down by this Court in *Santosh Devi v. National Insurance Co. Ltd.* 30% of future prospects of the deceased should be added to the monthly income. If 30% is added to the monthly income, it would amount to Rs. 7800 p.m. From the same, 1/3rd should be deducted towards the personal expenses of the deceased, then the remaining amount would come to Rs. 5200 per month. The same is multiplied by 12 amounting to Rs. 62,400 which would be the multiplicand. The same must be multiplied by 16 multiplier as the Tribunal has taken the age of the deceased at 35 as mentioned in the post-mortem report, which is produced as Ext. 5. According to the decision of this Court in *Sarla Verma v. DTC*, the multiplier of 16 taken by the Tribunal for computation of loss of dependency is correct. If the 16 multiplier is applied to the multiplicand of Rs. 62,400, it comes to Rs. 9,98,400 which amount is awarded towards the loss of dependency of the appellants.

26. While Apex Court dealing with claim of compensation, due to death of deceased Nazirbhai on 30.5.1998, who was going on his bicycle to his contract work of polishing at Rashidbhai Pathan, in Civil Appeal No. 8251 of 2013: *Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service*, observed as under in para. 7 & 8 of the judgment:

7. In our considered view, the approach of both the Tribunal as well as the High Court in taking notional income of the deceased at Rs. 15,000/- per annum to which Rs. 30,000/- was added and divided by 2 bringing it to a net yearly income of Rs. 22,500/- which has been interfered with by the High Court by taking Rs. 15,000/- as notional income on the basis of the IIInd Schedule to the Section 163-A of the M.V. Act is an erroneous approach to determine just and reasonable

compensation in favour of the legal representatives of the deceased who was the sole earning member of the family. It is an undisputed fact that the deceased was working as a polisher, which is a skilled job. This important aspect of the case of the appellants was not taken into consideration by both the Tribunal as well as the High Court, thereby they have gravely erred by taking such low notional income of the deceased though there is evidence on record and the claim petition was filed u/s 166 of the M.V. Act. The High Court taking Rs. 15,000/- per annum as the notional income and deducting 1/5th towards personal expenses which would come to Rs. 12,000/- is not only an erroneous approach of the High Court but is also vitiated in law. The finding of fact recorded by the Tribunal in the absence of any rebuttal evidence to show that the deceased was not working as a polisher and it is not a skilled work is also an erroneous finding for the reason that both the Tribunal and the High Court have not assigned reason for not accepting the evidence on record with regard to the nature of work that was being performed by the deceased. The State Government in exercise of its statutory power u/s 3 of the Minimum Wages Act, 1948 must issue a notification for fixing the wages of a polisher. Even in the absence of such a notification, both the Tribunal as well as the High Court should have at least taken the income of the deceased as Rs. 40,000/- per annum as per the table provided in the IIInd Schedule to Section 163-A of the M.V. Act for the purpose of determining just, fair and reasonable compensation under the heading loss of dependency of the appellants, though the said amount is applicable only to the claims under no fault liability. If 1/5th amount is deducted out of the above annual income the resultant multiplicand would be Rs. 32,000/- per annum. Both the Tribunal and the High Court should have proceeded on the aforesaid basis and determined the compensation under the heading loss of dependency of the appellants.

8. In view of the aforesaid fact, we have to hold that it would be just and proper for this Court to take a sum of Rs. 5000/- as the monthly income of the deceased having regard to the nature of job that the deceased was performing as a polisher, which is a skilled job, wherein the annual income would come to Rs. 60,000/-. This Court in judgment of Santosh Devi v. National Insurance Co. Ltd. and others 5, has held that an addition of 30% increase must be applied for increase in total income of the deceased over a period of time if he had been alive. Further, in the recent decision in Rajesh and others v. Rajbir Singh, this Court while referring to the case of Santosh Devi (supra) held that in the case of self-employed persons or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects of the deceased. Keeping in view the five dependants of the deceased in the case on hand, 1/5th amount is to be deducted towards personal expenses. Having regard to the age of the deceased as 25, as mentioned in the post mortem report, which age is taken by both the Tribunal as well as the High Court, and keeping in mind the life expectancy of the deceased, multiplier of 20 must be applied to the multiplicand for the purpose of

quantifying loss of dependency. Further, following the decision of this Court in *Rajesh v. Rajbir Singh* (supra), Rs. 1,00,000/- must be added under the head of loss of consortium and Rs. 1,00,000 under the head of loss of care and guidance for minor children. Further, it was held by this Court in the case referred to supra that Rs. 25,000/- must be awarded for funeral expenses as this Court has made observations in the case referred to supra that the tribunals have been frugal in awarding the compensation under the head "funeral expenses" and hence, we award Rs. 25,000 under the head of funeral expenses to the claimants/legal representatives.

27. In the present case, the deceased was a young man of 24 years, performing the functions of skilled worker, who died in the accident occurred in the year 2007. His salary in such circumstances could not be assessed at less than Rs. 6,000/- per month. Since his age was less than 30 years as such an addition of 50% towards future prospects is also admissible. After adding 50% towards future prospect, his monthly salary would work out to Rs. 9,000/- per month and we hold it accordingly.

28. In the instant case, evidence suggests that deceased was married but claim has been brought only by the parents. The argument of the counsel for the insurance company that age of the parents had to be relied upon to determine the multiplier, is correct. The parents of the deceased are between 40-45 years and, therefore, the admissible multiplier would be 15.

29. In *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, the issue of multiplier was dealt with in a case, where the dependents of the deceased are his parents and it was observed that in such case the age of parents would be relevant for determining the multiplier. The observation made in para. 18 in *U.P. SRTC v. Trilok Chandra* (supra) was reiterated by Hon''ble Supreme Court in *Sarla Verma* (supra). Para. 18 of *U.P. SRTC v. Trilok Chandra* (supra) is reproduced:

18.....Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier.....What we propose to emphasise is that the multiplier cannot exceed 18 years'' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16

30. The tribunal has deducted 1/3rd towards personal expenses. In the present case, it also transpires that deceased was married. However, the claim for compensation has been raised only on behalf of parents of the deceased and no claim for compensation at the instance of the wife has been raised. The issue of deduction for personal expenses and living expenses has been considered in respect of a married person and also a bachelor in para. 30 and 31 of *Sarla Verma* (supra), which is referred hereinafter:

30. Though in some cases the deduction to be made towards personal and living

expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and sibling is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

31. Claim for compensation in this case has been raised only at the instance of the parents and no claim for compensation on account of alleged wife has been brought on record. As such, the principle laid down in para. 31 aforesaid would be more appropriate to be applied in the present case. 50% of the aforesaid amount, therefore, would be appropriated towards personal and living expenses of the deceased and remaining amount of 50% alone would be treated towards determination of loss of income.

32. The tribunal has allowed payment of Rs. 2,000/- toward funeral expenses. In Rajesh and Others Vs. Rajbir Singh and Others, the issue relating to payment of funeral expenses has been dealt with by the Apex Court in para. 18 as under:

18. We may also take judicial notice of the fact that the tribunals have been quite frugal with regard to award of compensation under the head "funeral expenses". The "price index", it is a fact has gone up in that regard also. The head "funeral expenses" does not mean the fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of "funeral expenses", in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs. 25,000/-

As such, in such circumstances, we also hold that the claimants are entitled to funeral expenses amounting to Rs. 25,000/-.

33. The tribunal has awarded payment of Rs. 2,500/- towards loss of estate in

the present case. The deceased was a young man and, therefore, it would be appropriate to award a sum of Rs. 10,000/- for loss of estate. The payment of Rs. 2,500/- towards cost of litigation is maintained.

34. In such circumstances, the claimants would be entitled to compensation following heads:

35. The tribunal has allowed interest at the rate of 8% p.a. from the date of filing of the claim petition. In *Puttama (supra)*, Hon'ble Supreme Court considered the question of payment of interest. Para. 58, 59, 60, 61 and 62 of the said judgment is reproduced:

58. The rate of interest provided and granted under different Acts is as under: (a) The Section 4(A)(3) of the Workmen's Compensation Act, 1923 provides payment of interest @ 12% per annum or at such higher rate not exceeding the maximum of the lending rate of the scheduled banks for the delayed payment of compensation. (b) The Consumer Protection Act even though provides no provision for grant of interest, this Court has granted interest by invoking Section 3 of the Interest Act and Section 34 of the CPC and has awarded interest @ 12% to 18% for delayed payment. (c) The Land Acquisition Act provides for the interest for delayed payment @ 9% for the first year and 15% for the rest of the years. (d) The Arbitration and Conciliation Act, 1996 provides for interest @ 18% per annum u/s 31(7) of the Act.

59. This Court in *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, noticed that the Nationalized Banks are granting interest @ 9% on fixed deposit for one year and held as follows:

24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf, Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs. 50,000 paid by the Insurance Company u/s 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date.

60. This Court in *Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another*, noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the

Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.

61. In *Supe Dei v. National Insurance Co. Ltd. and another*, (2009) 4 SCC 513, this Court held that proper interest would be 9% per annum.

62. In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observation of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by this Court in similar case and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending.

36. Although, in case of *Puttama* (supra) Hon'ble Supreme Court allowed the interest at the rate of 12% p.a., but factum of nationalized bank awarding interest at the rate of 9% p.a. on fixed deposit etc. had been noticed. The award of interest at the rate of 9% p.a. in various other decisions were also noticed. We are, therefore, of the considered opinion that in the instant case also the claimants are entitled for interest upon the amount of compensation at the rate of 9% p.a.

37. In view of our aforesaid findings, we modify the award dated 17.11.2009 passed by Motor Accident Claims Tribunal, Faizabad in M.A.C.P. No. 137 of 2007 (*Rajendra Pratap Singh and another v. Rajaband Khan and others*) and allow the claim for payment of compensation amounting to Rs. 8,47,500/-, as calculated above, alongwith interest at the rate of 9% p.a. from the date of filing of the claim petition. The United India Insurance Company Ltd. having its Regional Office, Kapoorthala Complex, Lucknow through its Manager is directed to pay enhanced/additional compensation to the claimants within a period of three months by getting a demand draft prepared in their names in terms of the impugned award. Accordingly, the F.A.F.O. No. 236 of 2010 is dismissed and F.A.F.O.D. No. 1006 of 2010 is partly allowed in terms of the aforesaid directions. No order as to costs.