

# Chandra @ Chnada @ Chandraram vs Mukesh Kumar Yadav on 1 October, 2021

**Author: R. Subhash Reddy**

**Bench: Hrishikesh Roy, R. Subhash Reddy**

C.A.@S.L.P.(C)No.6466 of 2019

REPORTA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6152 OF 2021

[Arising out of S.L.P.(C)No.6466 of 2019]

Chandra @ Chanda @ Chandraram & Anr.

....Appellan

Versus

Mukesh Kumar Yadav & Ors.

....Response

JUDGMENT

R. Subhash Reddy, J.

1. Leave granted.

2. Unfortunate parents who lost their son aged about 32 years in the motor vehicle road accident on 27.02.2016, are before this Court claiming enhancement of compensation arising out of an application filed under Section 166 of the Motor Vehicles Act, 1988.

3. The appellants are the parents; 4 th respondent is the wife; 5th respondent is the minor son; 6 th respondent is the brother; and 7 th respondent is the sister of the deceased Shivpal. The appellants and C.A.@S.L.P.(C)No.6466 of 2019 respondent nos.4 to 7 were the applicants in the application filed under Section 166 of the Motor Vehicles Act, 1988 before the Motor Vehicle Accident Claims Tribunal, Ajmer, Rajasthan (for short, 'the Tribunal') claiming compensation of Rs.93,08,000/□ with interest @ 15% p.a. The Tribunal by judgment dated 25.11.2017 has awarded the total compensation of Rs.10,99,700/□with interest @ 6% p.a. The appellant□parents alone have filed appeal before the High Court. The High Court by impugned judgment dated 06.07.2018 dismissed

the appeal. As such the appellants are before this Court.

4. The deceased Shivpal was employed as driver on the vehicle, i.e., truck trailer bearing No.RJ 06 GA 576. When he was driving the vehicle on 27.02.2016, within the limits of Adarsh Nagar Police Station, Ajmer, the vehicle – truck trailer bearing no.RJ 14 GD 1156, driven by the 1st respondent; belonging to the 2nd respondent; and insured with the 3rd respondent, came on the wrong side and rammed into the vehicle of the deceased resulting in the accident, as a result of which Shivpal died in the said accident.

5. It was the case of the claimants before the Tribunal that deceased Shivpal was in possession of heavy vehicle driving licence and was earning Rs.15,000/- per month. Apart from the claim on account of loss of dependency, they also claimed compensation on all C.A.@S.L.P.(C)No.6466 of 2019 other conventional heads. The Tribunal has held that accident occurred due to rash and negligent driving of the vehicle, driven by the 1st respondent. The Tribunal by taking into account the income of the deceased at Rs.5746/- per month has awarded a total compensation of Rs.10,99,700/- inclusive of consortium of Rs.40000/- to the wife and minor child. The Tribunal had merely awarded an amount of Rs.10000/- each to the appellant parents, of the deceased.

6. We have heard Sri Aditya Singh, learned counsel for the appellants and Sri Sahil Raveen, learned counsel for respondent no.3.

7. Mainly it is contended by learned counsel for the appellants that though the deceased was earning Rs.15,000/- per month, being a heavy vehicle driver, the Tribunal has awarded compensation on account of loss of dependency by taking the income of the deceased at Rs.5746/- per month. It is submitted that wife of the deceased, i.e. respondent no.4 has clearly stated in her deposition that deceased was earning Rs.15000/- per month. It is submitted that inspite of such evidence on record the Tribunal has committed error in taking the income of the deceased at Rs.5746/- as per the minimum wage notified to the skilled labour. Further it is submitted that Tribunal has committed error in recording a finding that the appellants are not C.A.@S.L.P.(C)No.6466 of 2019 dependents as they were living separately. Lastly it is submitted that appellants are also entitled to compensation under the head of 'loss of consortium'.

8. The learned counsel appearing for the 3rd respondent has submitted that in absence of any documentary evidence on record to show the salary of the deceased at Rs.15,000/- per month the Tribunal has correctly taken into account the monthly earnings of the deceased at Rs.5746/- By relying on a judgment of this Court in the case of Kirti & Anr. v. Oriental Insurance Company Limited<sup>1</sup>, learned counsel has submitted that there are no grounds to interfere with the impugned judgment of the High Court.

9. Having heard the learned counsels on both sides, we have perused the impugned order and other material placed on record. At the outset, we may note that the High Court by a cryptic order dismissed the appeal preferred by the appellants without considering the various grounds raised in the appeal.

10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/□per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. 1 (2021) 2 SCC 166 C.A.@S.L.P.(C)No.6466 of 2019 Though the wife of the deceased has categorically deposed as AW□ that her husband Shivpal was earning Rs.15000/□per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/□per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors.2 this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/□per month. In this case the accident was 2 (2013) 10 SCC 695 C.A.@S.L.P.(C)No.6466 of 2019 on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/□per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3 rd is to be made from the income of the deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/□per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/□ As an amount of Rs.10,99,700/□is already paid towards the loss of dependency the appellant□parents are entitled for differential compensation of Rs.3,33,964/□ Further in view of the judgment of this Court in the case of Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors.3 the appellants are also entitled for parental consortium of Rs.40,000/□each. The finding of the Tribunal that parents cannot be treated as dependents runs contrary to the judgment of this Court in the case of 3 2018 SCC OnLine SC 1546 = (2018) 18 SCC 130 C.A.@S.L.P.(C)No.6466 of 2019 Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr.4. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited<sup>1</sup> relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record.

11. For the aforesaid reasons this appeal is allowed and appellants are entitled for further compensation amount of Rs.3,33,964/□on account of loss of dependency and consortium amount of Rs.40,000/□each. Thus total compensation payable to the appellants is fixed at Rs.4,13,964/□ with interest @ 6% p.a. from the date of filing of claim petition.

12. For the aforesaid reasons the appeal is partly allowed, with no order as to costs.

.....J. [R. Subhash Reddy] .....J. [Hrishikesh Roy] New Delhi.

October 01, 2021.

4 (2009) 6 SCC 121