NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 576 of 2006

1. Smt. Saravni, 30 years, wife of Late Bhuneswar
2. Ku. Mamta, aged about 10 years, d/o late Bhuneswar
3. Javed, 7 1/2 years, s/o late Bhuneswar,
4. Ritesh, aged about 4 1/2 years, son of late Bhuneswar
5. Rohani, aged about 2 1/2 years, S/o late Bhuneswar

Appellants 2 to 5 being minors represented through Mother and natural guardian, appellant no.1 Saravni.

All R/o near Durga Mandir, Akash Nagar, Near Housing Board Colony, Frezarpur, Jagdalpur, Distt. Bastar (C.G).

---- Appellants

Versus

1. Avadesh Chandra Dubey, aged about 47 years, S/o B.P. Dubey, R/o Power House Chowk, Vijayward, Jagdalpur
2. The United India Insurance Company through Branch Manager, Jagdalpur, Distt Bastar (C.G).
3. Pavitrabagh, aged about 62 years, s/o late Gangadhar,
4. Smt. Gunjali Bagh, 57 years, wife of Pavitrabagh,

Respondents 3 & 4 are R/o Near Durga Mandir, Akash Nagar, Near Housing Board Colony, Frezarpur, Jagdalpur, District Bastar (C.G).

---- Respondents

For Appellants	:	Mr. Keshav Dewangan, Advocate
For Respondent No.1	:	None
For Respondent No. 2	:	Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgment/order on Board

27.07.2015

1. No representation is made on behalf of respondent No.1 despite service of notice. Reading of the award would show that the primary liability was fastened on the Insurance Company which is

represented by Shri Dashrath Gupta, Advocate, therefore, the appeal is heard on merits.

2. This is an appeal against the award dated 31.03.2006 passed in claim Case No.119/2003 by the Ist Additional Motor Accidents Claims Tribunal, Jagdalpur whereby the Tribunal has partly allowed the claim petition of the claimants by awarding Rs.4,74,320/- as against the claim of Rs.19,10,000/-.

3. The claim petition was filed by the mother, father, widow and four minor children of deceased Bhuneshwar. It was pleaded in the claim petition that he was working as peon in the Middle School, Bamhni and was resident of Jagdalpur city. It was further pleaded that every day he used to make journey up and down from Jagdalpur to his place of working i.e., Bamhni. On the date of accident i.e., 04.09.2003. On the fateful day, after completion of his duty, the deceased was on his way back by motorcycle TVS bearing Regn.No.C.G.17-ZE/0453 as a pillion rider. The vehicle was driven by original non-applicant No.1 Awdhesh Chandra Dubey. It was stated that because of rash and negligent driving of the vehicle, the deceased fell down and sustained grievous injuries on head and other parts of body. He was admitted to the hospital at Jagdalpur and subsequently looking to the seriousness of injuries, he was referred to Raipur Hospital. However, before he could reach Raipur Hospital, he died on the way. It was also stated that at the time of accident, the deceased was 35 years and was in government service and the payment of salary was being made to him after deduction of income tax. The claimants being dependents of deceased have claimed a total compensation of Rs.19,10,000/- on various heads for the death of deceased.

4. Non-applicant No.1 has contended that because of rains, the road has become wet, consequently the vehicle was slipped whereby the deceased fell down and sustained injuries. It was further stated that at the time of accident, the vehicle was insured with non-applicant No.2 and therefore, non-applicant No.2 is responsible to make good the payment.

5. The Insurance Company contended that at the time of accident, the non-applicant No.1 did not have valid driving licence and the vehicle was being driven in breach of terms of policy, therefore, the Insurance Company is not liable to make good the payment of compensation.

6. The Tribunal after evaluating the facts and evidence on record passed an award of Rs. 4,74,320/- with interest @ 6% per annum and recorded a finding that at the relevant time, the motorcycle was being driven in rash and negligent manner, consequently, the accident had happened. There was no challenge to such finding. In absence of any challenge to the same, the findings are affirmed.

7. Now coming to the question of quantum, learned counsel for the appellant submits that the learned Tribunal has not awarded the just compensation and has failed to take into account the future prospects while computing the income though the deceased was Government servant. He further contends that the deduction has also wrongly been made, therefore, he prays that just compensation be awarded.

8. Per contra, learned counsel appearing for the Insurance Company vehemently opposes the same and would submit that the award is well merited which do not call for any interference of this Court.

9. I have heard learned counsel for the parties and have also perused the documents on record.

10. The only question which calls for consideration in this appeal is quantum of assessment. The Tribunal has assessed the income of deceased as Rs.3120/- per month or Rs.37,440/- per annum. The deceased was working as peon in education department. The salary slip is proved as Ex.P-7. Reading of the salary slip shows that the gross salary of the deceased was Rs.4580/- including DA Rs.1480, special allowance Rs.38, HRA Rs.27/- and other allowance Rs.15/-. The net salary was shown as Rs.3120/- after deducting amounts of GPF Rs.370/-, loan advance Rs.1000 and GIS Rs.90/-. In this regard, the applicants have examined one Rewa Ram Thakur as A.W.2 who is the Block Education Officer. This witness has corroborated the salary slip marked as Ex.P-7. He has stated that at the time of accident, the deceased was drawing a gross salary of Rs.4580/-. The Supreme Court in a case law reported in ***2013(3) TAC 6 (SC) – Vimal Kanwar andothers Vs. Kishore Dan and others*** held that the amounts of GPF, Pension, Insurance etc., receivable by the claimants will not come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction. Therefore, in view of the above principle laid down by the Apex Court, in the opinion of this Court, the Tribunal has wrongly deducted the amounts of GPF Rs. 370/-, loan advance Rs.1000/- and GIS Rs.90/- while computing the income. Hence, the gross salary of the deceased i.e., Rs.4580/- per month according to the salary slip (Ex.P-7) is taken as the actual income of deceased. Consequently, the annual income is worked out to Rs. 54,960/- (Rs.4580 x12).

11. A perusal of the award would show that the Tribunal has not added any future prospects. Taking into fact that the deceased was salaried person and was aged about 35 years at the time of accident as per the postmortem report Ex.P-6, applying the principles laid down in ***Rajesh and others Vs. Rajbir Singh & others (2013) 9 SCC 54***, further there would be a an addition of 50% to his actual income towards future prospects. Thus the total income is worked out to Rs.6870 (4580 plus 2290) per month or Rs.82,440/- per annum (6870 x 12).

12. Now coming to the deduction of tax, the accident took place on

04.09.2003 , therefore as per the income rate as was applicable in the year 2003-2004, upto first Rs.50,000/- no tax was payable. So by exempting Rs..50,000 from annual income of Rs..82,440/-, the remaining taxable amount comes to Rs. 32,440/-. Subsequently, on the next Rs. 10,000/-, 10% tax was leviable which comes to Rs. 1000/- and on the balance amount of Rs.22,440/-, 20% tax was leviable which comes to Rs.4488/-. Thus the total leviable tax comes to Rs.5488 (Rs.4488 plus 1000) which would be deducted from Rs.82,440/-. After deducting Rs.5488/- the net income comes to Rs.76,952/- (82,440 minus 5488).

13. Now coming to the deduction towards personal and living expenses, the claim petition was initially filed by 7 persons being dependents of deceased, therefore, following the principles laid down in ***Sarla Verma Vs. Delhi Transport Corporation, 2009 6 SCC 121*** 1/5th would be deducted towards personal and living expenses. After deducting 1/5, the annual dependency comes to Rs.61,562/-.

14. Since the age of the deceased was 35 years as per Ex.P-6, according to the multiplier table given in *Sarla verma's case (supra)*, the deceased belonged to the age group of 31-35 years and, therefore, multiplier 16 would be applicable. Thus the total dependency comes to Rs.9,84,992/- (61562 x 16). Further the Tribunal has awarded a consolidated sum of Rs.50,000/- on other heads which appears to be very meagre. Taking into the age of deceased as also the age of widow claimant and following the law laid down in ***2015 AIR SCW 3577 – Asha Verma Vs. Maharaj Singh and others***, Rs.1,00,000/- is granted for loss of consortium to the wife. Further Rs.2,00,000/- towards loss of love and affection, care and guidance etc., to the four claimant-children due to the loss of their father (deceased), Rs. 50,000/- for loss of love and affection to the mother and father of deceased and Rs. Rs.25,000/- for funeral expenses are awarded. Thus the compensation to be reassessed is as follows:

S.No.	Heads	Calculation
(i)	Income of deceased per month @ 4580/-	Rs.54,960/- per annum
(ii)	50% of (I) above to be added as future prospects @ Rs. 2290/- per month	(Rs.54,960 + 27,480 = Rs.82,440/-
(iii)	Income after tax deduction @ Rs.5488/-	Rs. 82,440 – 5488./- = Rs. 76,952
(iv)	One fifth of (iii) deducted as personal expenses of the deceased	Rs. = 76,952. – 15,390 = Rs. 61,562/-
(v)	Compensation after multiplier of 16 is applied	Rs.61,562 x 16 = . **Rs.9,84,992/-**
(vi)	Loss of consortium to the wife	Rs.1,00,000/-
(vi)	Loss of Love and affection to the four minor children, care and guidance etc.	Rs. 2,00,000
(vii)	Loss of love and affection for the parents	Rs. 50,000/-
(vii)	Funeral expenses	Rs. 25,000/-
	Total	**Rs.13,59,992 /-**

15. Thus the total compensation will be Rs.13,59,992./-. After deducting Rs.4,74,320/- awarded by the tribunal, the enhancement would be Rs.8,85,672/-.

16. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 8,85,672/- in addition to what is already awarded.

17. Now coming to the interest, the Supreme Court in ***Asha Verman & others V. Maharaj Singh & others (supra)*** held in para 19 that the High Court has erred in awarding an interest at the rate of 8% per annum only, instead of 9% per annum on the compensation amount as per the principles laid down in case of ***Municipal Corporation of Delhi V. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481 : AIR 2012 SC 100***. Therefore, in the instant case, interest @

9% per annum is awarded on the compensation amount from the date of filing of the application till the date of payment. The claimants are entitled to receive the said compensation from the Insurance Company.

18. So far as it relates to apportionment, out of total dependency of Rs.9,84,992/-, the mother and father of deceased will get Rs.1,50,000/- plus Rs.50,000/- granted towards loss of love and affection i.e., total Rs.2,00,000/-. Rs.2,00,000/- each shall be deposited in the name of each claimant children in the form of fixed deposit in any Nationalised Bank for a period of 5 years. The remaining amount shall be disbursed to the widow of deceased.

19. The Registry is further directed to communicate the claimants in writing the "amount of award enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language.

Sd/-
GOUTAM BHADURI
JUDGE

Rao