NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 144 of 2010

1. Sunita Bai, Wd/o. Late Kapil Kumar Chandrawanshi, aged about 24 years.
2. Anil Kumar, S/o. Late Kapil Kumar, aged about 6 years
3. Kumari Renuka, D/o. Late Kapil Kumar Chandrawanshi, aged about 4 years

   Appellant No.2 & 3 being minor, through guardian mother Sunita Bai.

   All at present residing at Village Amalidih, Tahsil Dongargarh, District Rajnandgaon

   Permanent address village – Kalyanpura, Tahsil Dongargarh, District Rajnandgaon (C.G.)

---- Appellants.

Versus

1. Md. Rafiqu Khan, S/o. Mahbub Khan, R/o. Dauchaura Khairagarh, District Rajnandgaon (C.G.)
3. Bagasram Verma, S/o Gainduram Verma, R/o Ward No.3, Chikhali, Distt.-Rajnandgaon
4. Reliance General Insurance Co.Ltd. Shop No.124-126, Krishna Complex, Kachahari Chowk, Raipur

---- Respondents

For Appellants	:	Mr. Amiyakant Tiwari, Advocate.
For Respondents No. 1 & 2	:	Mr. Abhisek Sharma, Advocate
For Respondent No.3	:	Mr. S.S. Rajput, Advocate.

Order On Board By

17/07/2015

1. Challenge in this appeal is to the award dated 23.09.2009, passed in Claim Case No.116/2008, by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon, whereby as against the claim made for Rs.50,23,136/-, an award of Rs.7,95,280/- was passed.

2. The appeal is by the claimants.

3. Briefly stated facts of the case as pleaded by the claimants are that the deceased, Kapil Kumar Chandrawanshi was working as Assistant Grade-III (Line) in the electricity department and was getting a salary of Rs.9,542/-. It was stated that on 06.11.2008, while he was going on his motor cycle from Chhuikhadan to Gandai, when he reached near a place known as Bhorampur Chowk, he was dashed by Bus bearing No.C.G.-04-E-1364. It was stated that at the relevant time, the offending vehicle was being driven in rash and negligent manner, which caused the accident, consequently, the deceased succumbed to the injuries. Therefore, on the different heads, the claim petition was filed.

4. The non-applicant No.1 & 2, the driver and the owner of the vehicle denied the accident and stated that the accident had happened due to rash and negligent act of the deceased himself for which the non-applicants are not liable. It was further stated that the vehicle was insured with the insurance company, the respondent No.3, and at the time of the accident, the driver of the offending vehicle was holding a valid license, therefore, the insurance company is liable to make good the compensation.

5. The insurance company in its reply stated that at the relevant time, the driver of the offending vehicle was not holding

effective and valid driving license to drive the vehicle. Consequently, it lead to breach of policy, therefore, the insurance company, can not be held liable to pay the compensation.

6. The learned Claims Tribunal after evaluating the entire evidence on record came to a conclusion that at the relevant time, the offending vehicle was driven in rash and negligent manner and it was responsible to cause accident. There is no challenge to such finding by the respondents and in absence of challenge to the same, the finding arrived at by the learned Tribunal are affirmed.

7. Learned counsel for the appellants would submit that the Tribunal has failed to take into account the salary certificate and without any rhyme and reason has assessed the income by taking impermissible deduction which was not statutory deductions. He further submits that multiplier along-with future prospects has not been correctly applied and therefore, prays for enhancement of the compensation. It is further stated that the just compensation has not been arrived at.

8. Per contra, learned counsel appearing on behalf of the insurance company supported the order and would submit that the award is well merited which do not call for any interference.

9. I have heard the learned counsel for the parties at length, perused the documents and the evidence on record.

10. Now coming to the quantum of compensation. The wife has stated that her husband was working as a Line Man in the Electricity Department and was getting salary of Rs.9542/-. The salary certificate is being proved and marked as Ex.P/11. Perusal of the salary certificate would show that gross earning was of Rs.9542/- and thereafter deductions of Rs.763/-, Rs.763/- & Rs.573/- towards LIC and, Rs.100/- towards GSLIS and Rs.833/- towards NCP scheme were made and thereby total deduction of Rs.3098/- was made. The learned Tribunal has assessed the salary of the deceased to Rs.6,444/-. Taking into consideration the facts that the amount so deducted by the Tribunal are not of statutory nature, therefore, the said deductions in the gross salary have wrongly been made by the learned Claims Tribunal. Consequently, it is held that gross earning as has been shown of Rs.9,542/- was admissible to be a salary being received by the deceased at the time of accident.

11. Since the deceased was aged about 27 years at the time of accident as per the postmortem report, Ex.P-7. Therefore taking into account that he was below the age of 40 years there would be further addition of 50% as future prospects as per the law laid down in case of ***Rajesh & Others Vs. Rajbir Singh & Others*** reported in ***(2013) 9 SCC 54,*** over and above the salary of Rs.9,542/- and thereby the 50% of amount comes to Rs.4,771/- and total salary comes to Rs.14,313/- and thereafter

by multiplication of 12, the annual salary works out to Rs.1,71,756/-.

12. The income tax as was payable for the financial year 2008-09 and assessment year 2009-10, up till Rs.1,50,000/- no tax was payable and further exceeding Rs.1,50,000/-, 10% income tax was payable. Therefore, after deduction of Rs.1,50,000/- from the annual salary i.e. Rs.1,71,756/- – Rs.1,50,000/-, the taxable income works out to Rs.21,756/-, on which 10% income tax would be chargeable, which comes to Rs.2,175/-, thereafter on addition of education cess of 2% and secondary and higher education cess of 1% on income tax, it comes to Rs.43/- & Rs.21/- respectively. So, the total income tax would be Rs.2,239/-, which will be deductible from the income i.e. Rs.1,71,756/- – Rs.2,239/- and thereby the net income works out to Rs.1,69,517/-.

13. The claim petition is preferred by the wife and two children, therefore, as per the law laid down in case of ***Sarla Verma Vs. Delhi Transport Corporation*** reported in ***2009 6 SCC 121***, 1/3 would be deducted towards personal expenses, which comes to Rs.56,505/- and the dependency works out to Rs.1,13,012/-.

14. As the deceased was aged about 27 years as per Ex.P-7, therefore, the multiplier of 17 would be applicable and thereby the total dependency works out to Rs.19,21,204/-.

15. The learned Claims Tribunal has further granted an amount of Rs.10,000/- for loss of consortium, Rs.5,000/- for loss of love and affection to the appellant No.2 & 3 each and Rs.2,000/- for funeral expenses, which appears to be too meager, therefore, for loss of consortium Rs.1,00,000/- is awarded. The amount of Rs.5,000/- - Rs.5,000/- awarded towards love and affection to the appellant No.2 & 3 is enhanced to Rs.50,000/-. Further the amount of Rs.2,000/- awarded towards funeral expenses is enhanced to Rs.25,000/-.

16. Therefore, the compensation is recomputed as under :-

S.No	**Heads**	**Calculation**
(i)	Loss of dependency	Rs.19,21,204.00
(ii)	For loss of consortium	Rs. 1,00,000/-
(iii)	For loss of love and affection	Rs. 50,000/-
(iv)	For funeral expenses	Rs. 25,000/-
	Grand Total	**Rs. 20,96,204/-**

17. Thus the total compensation is recomputed as Rs.20,96,204/-. After deducting Rs.7,95,280/- as awarded by the Tribunal, the enhancement would be Rs.13,00,924/-.

18. In the result, the appeal is allowed in part. The appellants will be entitled to the said sum of Rs.13,00,924/- in addition to what is already awarded by the Claims Tribunal with interest at the rate of 9% per annum on the enhanced claim amount from the date of enhancement till the date of its realization.

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

20. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

balram