NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 579 of 2008

1. Smt. Kiran Shrivastava, aged 47 years, W/o. Late Surendra Shrivastava,
2. Ku. Smita Shrivastava, D/o. Late Surendra Shrivastava, aged about 24 years.

   Both R/o. Qtr. No. 7-B, Street No. 8, Sector No. 1, Bhilai, District - Durg (C.G.)

----Appellants

Versus

1. Satnam Singh, aged about 39 years, S/o. Kundan Singh, R/o. Ward No.36, New Khursipaar, Punjabi Colony, Bhilai, District Durg (C.G.)
2. Inderjeet Singh, S/o. Shri Dalbeer Singh, R/o. Shop No. 2/31, M.G. Market, Power House Bhilai, District - Durg (C.G.)
3. Regional Manager, The New India Insurance Company Ltd. Through In Front Of Project Automobile, Thakker Chamber, Power House, G.E. Road, Bhilai, District - Durg (C.G.)

---- Respondents

For Appellants	:	Mr. P.K. Tulsyan, Advocate.
For Respondent No.3.	:	Mr. A. K. Athley, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

11/09/2015

1. Challenge in this appeal is to the award dated 31.07.2007, passed by the 9th Additional Motor Vehicle Claims Tribunal, Durg in Claim Case No.196/2006.

2. The learned counsel for the appellant is absent. Shri P.K. Tulsyan, Advocate, who is present in the Court on request volunteers to assist the court as amicus curiae on behalf of the appellant since

the appeal is by the dependents of the deceased. The Court appreciates such gesture and the arguments are heard.

3. Briefly stated facts of the case are that on 17.08.2005, the deceased Surendra Shrivastava was going from Bhilai to Rajnandgaon from his motor cycle bearing No. C.G.-05A-3611, when he reached near a place Veterinary college at that time, another truck bearing No. C.G.-07-C-1496 owned by the original non-applicant No.2, Indrajeet, driven by the original non-applicant No.1, Satnam Singh, in a rash and negligent manner dashed the deceased, Surendra Shrivastava, thereby he sustained severe injuries. He was brought to the hospital, where he was declared dead. It was stated that deceased, Surendra Shrivastava was working in a school of Bhilai Steel Plant as PTI teacher was getting salary of Rs.16,220/-. Consequently under different heads, an amount of Rs.51,25,680/- was claimed for.

4. The Tribunal after assessment of the evidence on record has passed an award of Rs.8,65,088/-, therefore, this appeal is by the claimants for enhancement.

5. The learned Claims Tribunal after appreciating the entire evidence on record came to a conclusion that at the relevant time, the offending vehicle truck was being driven in rash and negligent manner and dashed the deceased, Surendra Shrivastava, whereby he breathed his last. Consequently, it was held that non-applicant No.1 was responsible for causing accident by use of the vehicle in rash and negligent manner. 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.

6. Mr. Pravin Tulsyan, Advocate assisting the Court would submit that the Tribunal has completely miscalculated the compensation to award just compensation to the claimants. He would submit that the salary slip is on record which shows that after deduction of the income tax and professional tax, the amount should have been calculated to Rs.14,564/- and the future prospects has also not been awarded. He further submits that in respect of the conventional head, meager amount has been awarded, therefore, the just compensation should have been awarded by the Court.

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

8. I have heard the learned counsel for the appellant, perused the documents and the evidence on record.

9. The only question which falls for consideration in this appeal is to the quantum of compensation. This fact has been stated by the claimant/wife that while deceased, Surendra Shrivastava was working in Higher Secondary School of Bhilai Steel Plant as PTI teacher, her husband used to get Rs.15,000/- to Rs.16,000/- per month. The salary slip of the deceased is marked as Ex.P/8. The said salary slip is further corroborated by the J. N. Banchhore (AW-2). This witness has stated that at the time of the accident, the deceased was getting salary of Rs.15,514/-. He has further stated that on head of EFBS, an amount of Rs.9,39,150/- has been paid after the death of deceased.

10. Perusal of salary slip, Ex.P/8 would show that gross salary was of Rs.16,043/-. Thereafter, the deduction of Rs.1329/- as income tax and professional tax of Rs.150/- if are calculated and thereafter deduction from gross pay, the salary payable comes to Rs.14,564/-. The other amount towards deduction of CPF, electricity, insurance, SBF cooperative would not fall for deductions as they are part of the salary. Likewise GPF shall also not be made a subject of deduction. As stated by AW-2, the amount under EFBS Rs.9,39,150/- was paid that also can not be teated to be the advantage receivable by the heirs on account of death as it has no correlation with the amount receivable under a statute occasioned only on account of accidental death. Consequently, as per Ex.P/8, the salary after deduction income tax of Rs.1329/- and professional tax of Rs.150/- from the gross salary of Rs.16,043/-, monthly salary comes to Rs.14,564/- and thereby annual dependency comes to Rs.1,74,768/- (14,564 x 12).

11. Perusal of the award would show that the Tribunal has not added any sum towards future prospects. Taking into the fact that the deceased was salaried person and was aged about 48 years as per the statement of wife and 50 years as per the document Ex.P/5. Considering the fact that the deceased was age group of 40 to 50 years at the time of the accident, there would be further addition of 30% 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 income of Rs.1,74,768/- and thereby 30% of amount comes to Rs.52,430/-, thus the total income works out to Rs.2,27,198/-.

12. Now coming to the deduction towards personal expenses, the claim petition was preferred by two persons i.e. widow and daughter of the deceased. Consequently, following the principles laid down in case of ***Sarla Verma V. D.T.C. (2009) 6 SCC 121,*** deduction of 1/3 is permitted, which comes to Rs.75,732/-. Therefore, after deducting 1/3 towards personal expenses, the annual dependency comes to Rs.1,51,466/- (2,27,198/- minus 75,732/-). Since the deceased was age group of 46 to 50 years, therefore, multiplier 13 would be applicable in this case. Thus the total dependency comes to Rs.19,69,058/- (Rs.1,51,466 x 13).

13. Under conventional head, the Claims Tribunal has awarded Rs.2,000/- towards funeral expenses. Rs.25,000/- for loss of estate. Rs.25,000/- for loss of consortium to the wife and Rs.10,000/- for love and affection. In the opinion of this Court, the amount awarded under conventional heads also need to be reassessed in view of law laid down in case of ***Asha Verman Vs. Maharaj Singh and Ors., reported in 2015 AIR SCW 3577.*** Therefore, I am inclined to award Rs.1,00,000/- for loss of consortium to the wife. For loss of love and affection to the daughter Rs.50,000/- is awarded. However, the amount of Rs.25,000/- awarded towards loss of estate is maintained. The amount of Rs.2,000/- granted for funeral expenses is further enhanced to Rs.25,000/-. Thus the total compensation to be reassessed is as follows :-

S.N.	**Heads**	**Calculation**
(i)	Salary of the deceased per month @ Rs.14,564/-.	Rs.1,74,768/- per annum
(ii)	30% of (i) above to be added as future prospects.	(Rs.1,74,768 + 52,430 = Rs.2,27,198/-

(iii)	One third of (ii) deducted as personal expenses of the deceased.	Rs. 2,27,198 – 75,732 = Rs. 1,51,466/-
(iv)	Compensation after multiplier of 13 is applied.	Rs. 1,51,466 x 13 = Rs. 19,69,058/-
(v)	Loss of consortium to the wife.	Rs. 1,00,000/-
(vi)	Loss of love & affection to the daughter	Rs. 50,000/-
(vii)	Loss of estate.	Rs. 25,000/-
(viii)	Funeral expenses.	Rs. 25,000/-
	Total	**Rs. 21,69,058/-**

14. Thus the total compensation is recomputed as Rs.21,69,058/-. After deducting Rs.8,65,088/- as awarded by the Tribunal, the enhancement would be Rs.13,03,970/-.

15. In the result, the appeal is allowed in part. The appellants will be entitled to the said sum of Rs.13,03,970/- in addition to what is already awarded by the Claims Tribunal with interest at the rate of 6% per annum from the date of filing of the claim petition till the date of its realization.

16. 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.

17. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Balram