NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 971 of 2011

1. Smt. Pramila Dhruw, W/o. Late Khorbahra Ram Dhruw, aged about 40 years.

2. Ku. Yogita Dhruw, D/o. Late Khorbahra Ram Dhruw, aged about 22 years.

3. Kaushalendra Kumar Dhruw, S/o. Late Khorbahra Ram Dhruw, aged about 19 years.

4. Ku. Manisha Dhruw, D/o. Late Khorbahra Ram Dhruw, aged about 20 years

   All R/o. Village Sher, Police Station and Tahsil Mahasamund, District Mahasamund (C.G.)

---- Appellants.

Versus

1. Sonit Patel, S/o. Dwarika Prasad Patel, aged about 22 years, R/o. Village Kumhari, Police Station – Arang, District Raipur (C.G.) (Driver Truck No.C.G./04/G/4346)

2. Hora Transport Company Private Limited, Raipur, Fafadih, Raipur, District Raipur (C.G.) (Owner Truck No.C.G./04/G/4346)

3. ICICI Lombard Insurance Company Raipur, District Raipur (Insurer Truck No.C.G./04/G/4346)

---- Respondents

Mr. Avinash Chand Sahu, Advocate for the Appellants.

Mr. Amrito Das, with Mr. K. Rohan, Advocates for the Respondent No.3.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

01/07/2015

1. Challenge in this appeal is to the award dated 06.09.2010, passed in Claim Case No.8/2010, by the Additional Motor Accident Claims

Tribunal, Gariyaband, District Raipur whereby as against the claim made for Rs.63,00,000/-, an award of Rs.18,48,600/- was passed.

2. The appeal is by the claimants.

3. Briefly stated facts of the case as was pleaded by the claimants are that on 22.11.2009, the deceased namely Khorbahara Ram Dhruwa while he was going on his motor cycle from Fingeshwar to Sher, he was dashed by the offending vehicle i.e. Truck bearing No.C.G.04-G-4346. This fact is not in dispute that the said truck was owned by the original non-applicant No.2 and non-applicant No.1 was the driver. It is also not in dispute that the truck was insured with non-applicant No.3.

4. During the course of enquiry before the Tribunal, the non-applicant No.3 admitted the fact that the offending truck was insured with respondent No.3 up till 19.10.2010, since the accident was of 22.11.2009, as such during the time of the accident, the truck was insured.

5. The learned Claims Tribunal after evaluating the entire evidence on record came to a finding that at the relevant time on 22.11.2009, while the deceased Khorbahra Ram Dhruw was going on his motor cycle from Fingeshwar to his village Sher, the offending truck bearing No.C.G.04-G-4346, driven in rash and negligent manner, dashed the deceased Khorbahra Ram Dhruw, whereby he sustained severe injuries and eventually died.

6. The learned counsel for the appellants contended that the Tribunal has not assessed the income and has failed to apply the correct multiplier. It is further contended that in absence of applying the correct multiplier, just compensation has not been awarded, therefore, prays for enhancement.

7. 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.

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

9. Admittedly, the question of negligence is not in challenge by either party. Consequently, the finding arrived at by the learned Tribunal that at the relevant time, the offending vehicle was being driven in rash and negligent manner, is affirmed.

10. Now coming to the question of compensation, it is stated that the deceased was working in the education department as BRC. The salary certificate has been marked as P/10, which bears the signature of the Officer In-charge and the last pay certificate shows that he was being paid 24,296/-. The salary slip, however, do not show that there has been a deduction of income tax.

11. The deceased was the government employee was working with a fixed salary. Therefore taking into account that he was between 40-50 years of age, 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 salary of Rs.24,296/- and thereby the 30% of amount comes to Rs.7,288/- and total salary comes to Rs.31,584/- and thereafter by multiplication of 12, the annual salary works out to Rs.3,79,008/-.

12. The accident took place on 22.11.2009, therefore, as per the income tax slabs as was applicable in the financial year 2009-2010 and assessment year 2010-2011, upto first Rs.1,60,000/- no income tax was payable. The rates of income tax in respect of individuals, Non-specified HUFs and AOPs for the assessment years 2010-2011 is shown in the table given below:-

Rates of income tax for Assessment year 2010-11 (in Percentage)		
First	Rs. 1,60,000.00	Nil
Next	Rs. 1,40,000.00	10%
Next	Rs. 2,00,000.00	20%
Balance		30%

So by exempting Rs.1,60,000/- from annual income of Rs.3,79,008/-, the remaining amount comes to Rs.2,19,008/-. Subsequently on the next Rs.1,40,000/-, 10% tax was leviable, which comes to Rs.14,000/- and after deduction, on the remaining slab of taxable income comes to Rs.79,008/-, wherein 20% tax was leviable. So by further levy of tax of 20%, it comes to Rs.15,801/-. Thus the total income tax leviable was Rs.29,801/- i.e. *14,000/-* on 1,40,000/- + *15,801* on 79,008/-. After deducting the said tax of Rs.29,801/-, the annual income is worked out to Rs.3,49,207/- (Rs.3,79,008 minus tax 29,801).

13. Now coming to the deduction towards personal expenses, the claim petition was preferred by wife and three children of the deceased. As per the principles laid down in case of ***Sarla Verma V. D.T.C. (2009) 6 SCC 121,*** if the number of dependent family members is 4 to 6, the deduction towards personal expenses should be 1/4th, therefore, after deducting ¼ towards personal expenses, the annual dependency comes to Rs.2,61,906/- (3,49,207 minus 87,301/-). The Tribunal has found the age of the deceased as 45 years, therefore, he belongs to the age group of 41-45 years. As per the table given in Para 40 of the judgment rendered in *Sarla Verma's case (supra)*, multiplier 14 would be applicable in this case. Thus the total dependency comes to Rs.36,66,684/- (Rs.2,61,906 x 14).

14. In addition, the Tribunal has also granted Rs.5,000/- towards funeral expenses, Rs.5,000/- for loss of consortium to the wife and Rs.5,000/- for loss of estate and no amount was granted towards love and affection to the children. In the opinion of this Court, the amount granted under other heads seems to be very low, therefore, it would be just and proper to enhance the amounts under these heads. Therefore, the loss of consortium towards wife is enhanced from Rs.5000/- to Rs.1,00,000/- and further a consolidated sum of Rs.50,000/- is awarded for loss of love and affection to the children. The amount of Rs.5,000/- awarded towards loss of estate is maintained. The funeral expenses granted by the Tribunal i.e., Rs.5000/- is further enhanced to Rs.25,000/-.

15. Therefore, the total compensation is recomputed as under :-

S.No	Heads	Calculation
(i)	Loss of dependency	Rs.36,66,684.00
(ii)	For loss of consortium	Rs. 1,00,000.00
(iii)	For loss of love and affection	Rs. 50,000.00
(iv)	For loss of estate	Rs. 5,000.00
(v)	For funeral expenses	Rs. 25,000.00
	Grand Total	**Rs. 38,46,684.00**

16. Thus the total compensation is recomputed as Rs.38,46,684/-. After deducting Rs.18,48,600/- as awarded by the Tribunal, the enhancement would be Rs.19,98,084/-.

17. In the result, the appeal is allowed in part. The appellants will be entitled to the said sum of Rs.19,98,084/- 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.

18. 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.

19. No order as to costs.

(Goutam Bhaduri)
Judge

Balram