

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1155 of 2014

1. Bed Ram, S/o. Bisahu Tamnaker, Aged About 49 Years, R/o. Village Barbhatha (Choriya), Thana/Chowki- Saragaon, Distt. Janjgir-Champa, C.G., Present Address- Village- Bagbuda, Post- Bhaisma, Tah. Korba, Distt. Korba, C.G.
2. Sukhin Bai, W/o. Bed Ram, Aged About 44 Years, R/o. Village Barbhatha (Choriya), Thana/Chowki- Saragaon, Distt. Janjgir-Champa, C.G., Present Address- Village- Bagbuda, Post- Bhaisma, Tah. Korba, Distt. Korba, C.G.

---- Appellants

Versus

1. Dinesh Kumar Sahu, S/o. Shri Ram Sahu, Aged About 40 Years, R/o. Barpali Chowk, Champa, Vhaya Champa, Distt. Janjgir-Champa, C.G.
2. M/s Pankaj Oxygen Private Ltd., Urla Industrial Area, Urla, Raipur, Distt. Raipur, C.G.
3. Divisional Manager, National Insurance Company Ltd., Urla Industrial Area, Urla, Distt. Raipur, C.G.

---- Respondents

For Appellants : Mr. K.K.Dewangan, Advocate

For Respondent No.3 : Mr. Ratan Pusty, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

19.08.2015

1. The instant appeal is against the award dated 13.08.2014, passed in Claim Case No.90/2010 by the learned Motor Accident Claims Tribunal, Korba.
2. The claim case was preferred by the mother and father of the deceased namely Manoj Kumar @ Ramdhan Tamnaker. The averments made in the petition was that the son of the deceased was working as a helper in

a vehicle owned by M/s. Pankaj Oxygen Pvt. Ltd., the Non-applicant No.2. It was stated that on 21.04.2010 while the vehicle was going from Champa to Anuppur via Korba to supply the Gas Cylinders, which was being driven by the original Non-applicant No.1, Dinesh Kumar Sahu, in rash and negligent manner dashed into a tree and as an impact of such accident the deceased died on the spot. Therefore, on the different heads, an amount of Rs.38,09,000/- was claimed.

3. The Non-applicant No.1, driver of the vehicle, denied the averments and stated that no accident had happened and the accident actually was caused by another vehicle which dashed the vehicle from behind, consequently, it dashed into a tree. It was further stated that at the time of accident the driver was holding a valid licence. The Non-applicant No.2, owner of the vehicle and employer of deceased contended that the deceased was an employee and he was getting a salary of Rs.3200/- per month. The rest of the averments were denied. The Non-applicant No.3, insurance company, in its reply contended that the driver of the offending vehicle was not having a valid and effective licence and the vehicle was being driven without any permit, therefore, it led to breach of policy and the other legal heirs were not arrayed on the claim petition, therefore, the claim petition is liable to be dismissed.
4. The learned Claims Tribunal after evaluating the facts and evidence has passed an award of Rs.1,78,600/- in favour of the claimants. The instant appeal is by the claimants. The Tribunal while adjudicating the issue came to a finding that at the relevant time the vehicle TATA 407 bearing No.C.G.04G 9814 was driven in rash and negligent manner, therefore, the accident occurred. The said finding is not under challenge and in absence of any challenge to such finding, the same are affirmed.

5. Learned counsel for the appellants/claimants would submit that the Tribunal has failed to award the just compensation. He further submits that despite the evidence on record that the deceased was earning Rs.7000/- per month, the Tribunal has wrongly assessed the income of Rs.3200/- per month. He further submits that under the conventional head meager amount has been awarded which too needs reconsideration. Therefore, it is submitted that the just compensation has also not been awarded, accordingly, the claim amount should be reassessed.
6. Per contra, learned counsel appearing on behalf of the insurance company supported the award and it is submitted that the order of the learned Claims Tribunal is well merited, which do not call for any interference.
7. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.
8. The only issue which is to be adjudicated is the quantum of compensation. The father of the deceased had stated that his deceased son was working as helper in the Truck and was earning Rs.7000/- per month. The respondent No.2, owner of the Truck i.e. M/s. Pankaj Oxygen Pvt. Ltd. contended in its reply that the deceased was working in the company and he was an employee of the company and used to earn Rs.3200/- per month. Except the oral statement of the father of the claimant, no other evidence is on record. The Tribunal has assessed the income of the deceased as Rs.3200/- per month on the basis of the averments made by the employer. The employer have admitted that the deceased was a workman engaged by him and was earning Rs.3200/- per month. In absence of any evidence, taking it to the notional income, it appears that such assessment of amount of Rs.3200/- per month which is stated by the employer appears to be correct. Therefore, the annual income of the deceased comes to $\text{Rs.3200} \times 12 = 38,400/-$.

9. Perusal of the award would show that the Tribunal has not added any sum toward future prospects. Here in the instant case, the age of the deceased appears to be of 21 years as would be evidence from postmortem report Ex.P-5. Considering the fact that the deceased was aged about 21 years at the time of accident, 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 income of Rs.38,400/- and thereby 50% of amount comes to Rs.19,200/- and total income comes to Rs.57,600/-.
10. Now coming to the deduction towards personal expenses, the claim petition was preferred by the mother & father of the deceased, as he was unmarried. Therefore, as per the law laid down in case of **Sarla Verma Vs. Delhi Transport Corporation** reported in **(2009) 6 SCC 121**, there would be deduction of 50% i.e. Rs.28,800/-. Since the deceased was aged about 21 years as per postmortem report, the multiplier 18 would be applicable. Thus, the total dependency comes to Rs.5,18,400/- (28,800 x 18).
11. Under the conventional heads, the learned Claims Tribunal has awarded Rs.10,000/- for love & affection to the mother & father, Rs.10,000/- for funeral expenses and Rs.5,000/- for loss of estate. In the opinion of this Court, the amount so granted under the conventional heads also need to be reassessed in view of the law laid down in case of **Asha Verman Vs. Maharaj Singh and others.**, reported in **2015 AIR SCW 3577**. Therefore, considering the age of the deceased, I am inclined to award Rs.50,000/- on the head of loss of love and affection to the mother & father, Rs.25,000/- for loss of estate and Rs.25,000/- for funeral expenses. Thus, the total compensation to be reassessed is as follows:-

S.No.	Heads	Calculation
(i)	Notional income @ Rs.3200/- per month	Rs.38,400/- per annum

(ii)	50% of (i) above to be added as future prospects	Rs. 38,400 + 19,200 = Rs. 57,600/-
(iii)	One half of (ii) deducted as personal expenses of the deceased.	Rs. 57,600 – 28,800 = Rs. 28,800/-
(iv)	Compensation after multiplier of 18 is applied	Rs. 28,800 x 18 = Rs. 5,18,400/-
(v)	Loss of love and affection to the mother & father	Rs. 50,000/-
(vi)	Loss of estate	Rs. 25,000/-
(vii)	Funeral expenses	Rs. 25,000/-
	Total	Rs. 6,18,400/-

12. Thus, the total compensation will be Rs.6,18,400/-. After deducting Rs.1,78,600/- awarded by the tribunal, the enhancement would be Rs.4,39,800/-.
13. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 4,39,800/- in addition to what is already awarded by the Claims Tribunal.
14. Now coming to grant of 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. No order as to costs.

15. 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.

Sd/-
(Goutam Bhaduri)
Judge