NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A (C). No. 1259 of 2014

1. Smt. Nipa Das, W/o. Late Jagannath Das, Aged About 22 Years, R/o. Dornapal, P.S. & Post- Dornapal, Tah. Konta, Distt. Dantewada, C.G.
2. Ku. Jayadas, S/o. Late Jagannath Das, Aged About 3 Years, Minor, Through- Mother Smt. Nipa Das, Appellant No.1, R/o Dornapal, P.S. & Post- Dornapal, Tah. Konta, Distt. Dantewada, C.G.
3. Smt. Jharnarani Das, W/o. Nirmal Das, Aged About 45 Years, R/o. Dornapal, P.S. & Post- Dornapal, Tah. Konta, Distt. Dantewada, C.G.

----Appellants

Versus

1. Madkamrama @ Madkamirama, S/o. Madkam Hirma, Aged About 35 Years, R/o. Kamapeddaguda, Tah. Konta, Distt. Dantewada, C.G.
2. Nirmal Das, S/.o Vinay Das, Aged About 55 Years, R/o. Dornapal, Tah. Konta, Distt. Dantewada, C.G.
3. The Branch Manager, Oriental Insurance Company Ltd., Branch Office- Hotel Laxman Avenue, Murti Line Road, Kumharpara, Jagdalpur, Distt. Bastar, C.G.

---- Respondents

For Appellants : Mr. Subhash Yadav, Advocate.
For Respondents 1 & 2 : No representation is made though served.
For Respondent No.3 : Mr. Bhupendra Singh, Advocate on behalf of Mr. N.K.Malviya, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21/08/2015

1. The Respondent No.1 & 2 i.e. Driver & Owner of the offending vehicle remained exparte before the Court below. The case was contested by the Respondent No.3. The primary liability for payment of amount of compensation is on the Insurance Company/ Respondent No.3, who is served and represented.

2. The appeal is against the award dated 16.05.2014, passed in Claim

Case No. 93/2014 by the learned First Additional Motor Accident Claims Tribunal, Bastar, Jagdalpur. By such award, an amount of Rs.4,64,000/- has been awarded in favour of the claimants. The instant appeal is by the claimants for enhancement of the award.

3. Briefly stated facts of the case are that the claim petition was filed by the widow, minor daughter and mother of the deceased namely Jagannath on a pleading that on 30.10.2009, the deceased had come to Jagdalpur for his business and while he was returning on a vehicle bearing No.C.G.10-BB/0140 from village Keshlur, at that time, the vehicle having been driven by the Non-applicant No.1 in rash and negligent manner turned turtle near village Pandripani. By such impact, the deceased sustained severe injuries and consequently he died. It was stated by the claimant wife that the deceased was running a grocery shop and apart from that he was engaged in the business of grain-merchant, thereby he used to earn Rs.10,000/- per month. It was stated that the claimants were completely dependent on the deceased.

4. The Non-applicant No.3, Insurance Company, stated that on the date of accident, the original Non-applicant No.1, the driver of the offending vehicle, namely Madkamrama was not holding a valid licence and permit, therefore, it amounted to breach of the terms of policy. Consequently, the insurance company cannot be held liable for payment of compensation.

5. The Tribunal after evaluating the facts and evidence came to a finding that at the relevant time, the offending vehicle bearing No.C.G.10-BB/0140 owned by the Non-applicant No.2, Nirmal Das, was being driven by the original Non-applicant No.1, Madkamrama, in rash and negligent manner and caused the accident. Since the said finding is not under challenge by either of the parties i.e. owner & driver or insurance company, the same is affirmed.

6. The only question which arises for consideration in this appeal is as to whether the claimants are entitled for enhancement of compensation amount ?

7. Learned counsel for the appellants submits that the Court below has failed to assess the notional income as against the evidence led by the appellants/ claimants. According to the statement of the claimant, the deceased was earning Rs.10,000/- per month by running a grocery shop as also doing the business of grain-merchant. He would submit that the proper multiplier has also not been applied and on the conventional head meager amount has been awarded, which cannot be stated to be just compensation. Therefore, the compensation may be suitably enhanced.

8. Per contra, learned counsel appearing for the respondent No.3 submits that the award is well merited which do not call for any interference by this Court as just compensation has been awarded.

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

10. The wife in her statement had stated that her husband Jagannath at the time of accident used to run his own grocery shop and thereafter during the season, he used to do the business of grain-merchant whereby he used to earn Rs.10 to 15,000/- per month. She has further stated that the grocery shop was being run by her husband and after death of her husband, in absence of any male member in the house, the shop has been closed. In the cross examination, she has not able to produce any document about the sales tax or registration or any other document so as to show that the shop was being run by the husband/deceased. She denied the suggestion that the shop was being run by her.

11. The learned Tribunal has assessed the monthly income of the deceased at Rs.3000/- per month. Admittedly, in this case, no document is placed on record to substantiate the fact that the deceased was running a grocery shop, however, in the statement of AW-2 this fact establishes that the deceased was running a grocery shop apart from that he used to do the business of grain-merchant.

12. In order to arrive at notional income, if the provisions of Second Schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicles Act are looked into, it has fixed the notional income to the extent of Rs.15,000/- in the year 1994. As the Central Government has failed to amend the second schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicles Act, the Courts/Tribunal can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the second schedule in the year 1994 and the date of accident in the given case.

13. Perusal of the statement of the claimants would show that the deceased belonged to unorganized sector and was running a small shop even no document has been placed on record. This fact also cannot be ignored that the accident in this case has taken place in the year 2009. The claimant wife has stated that the husband/ deceased was earning Rs.10,000/- per month. Therefore, even if, such statement are ignored, considering the increase in price of essential commodities during the period from 1994 to 2009, as also taking into the fact the wages which was prevailing for the skilled labour according to the second schedule, in the opinion of this Court, the notional income of Rs.4500/- per month would be proper in the facts and circumstances of the case. Consequently, the notional income of the deceased is assessed to Rs.4,500/- and thereby the annual income comes to Rs.54,000/-.

14. Perusal of the award would show that the Tribunal has not added any sum towards future prospects. Here in the instant case, the age of the deceased appears to be of 25 years as per the statement of the wife. Considering the fact that the deceased was aged about 25 years, which also finds support from the postmortem report Ex.P-8, which shows that the age of the deceased was 22 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 income of Rs.54,000/- and thereby 50% of amount comes to Rs.27,000/- and total income comes to Rs.81,000/-.

15. The said amount of Rs.81,000/- would be below the income tax leveled and was payable in the year 2009 for the Assessment Year 2010-11, consequently, no income tax would be deducted.

16. Now coming to the deduction towards personal expenses, the claim petition was preferred by 3 persons i.e., widow, minor children and mother of the deceased. Consequently, following the principles laid down in ***Sarla Verma v. D.T.C. (2009) 6 SCC 121***, deduction of 1/3rd is permitted, which comes to Rs. 27,000/-. Therefore after deducting one-third towards personal expenses, the annual dependency comes to Rs.54,000/- (81,000 – 27,000). Since the deceased belonged to the age group of 21 to 25 years, according to multiplier table given in *Sarla Verma (supra)*, multiplier 18 would be applicable. Thus, the total dependency comes to Rs.9,72,000/- (54,000 x 18).

17. Under the conventional heads, the learned Claims Tribunal has awarded Rs.5,000/- for loss of consortium to the wife, Rs.5,000/- to the mother for loss of love & affection, Rs.5,000/- to the child for loss of love & affection, Rs.15,000/- for loss of estate and Rs.2,000 for funeral expenses. In the opinion of this court, the amount under 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 widow, I am inclined to award Rs.1,00,000/- to the wife for loss of consortium, Rs.25,000/- to the mother for loss of love & affection, Rs.50,000/- to the child for loss of love & affection, Rs. 50,000/- 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.4500/- per month.	Rs.54,000/- per annum
(ii)	50% of (i) above to be added as future prospects.	(Rs.54,000 + 27,000 = Rs.81,000/-
(iii)	One third of (ii) deducted as personal expenses of the deceased.	Rs. 81000 – 27,000 = Rs. 54,000/-
(iv)	Compensation after multiplier of 18 is applied.	Rs. 54,000 x 18 = Rs. 9,72,000/-
(v)	Loss of consortium to the wife.	Rs. 1,00,000/-
(vi)	Loss of love & affection to the mother.	Rs. 25,000/-
(vii)	Loss of love & affection to the child.	Rs. 50,000/-
(viii)	Loss of estate.	Rs. 50,000/-
(ix)	Funeral expenses.	Rs. 25,000/-
	Total	**Rs. 12,22,000/-**

18. Thus, the total compensation will be Rs.12,22,000/-. After deducting Rs.4,64,000/- awarded by the tribunal, the enhancement would be Rs. 7,58,000/-.

19. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 7,58,000/- in addition to what is already awarded.

20. 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.

21. So far as it relates to apportionment, out of total award of Rs.12,22,000/-, the mother of deceased will get Rs.2,50,000/- and the minor child will get Rs.3,00,000/-. The amount awarded to the child shall be deposited in the name of the child in the form of fixed deposit in any Nationalized Bank for a period of 3 years. The remaining amount shall be disbursed to the widow of deceased.

22. 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

Ashok