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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1107 of 2013

1. Smt. Shanti Bai W/o Late Pardeshi Ram Dhankar Aged About 38 years
2. Bhupendra Kumar S/o Late Pardeshi Ram Dhankar Aged About 19 Years
3. Soman Kumar S/o Late Pardeshi Ram Dhankar Aged About 17 Years
4. Meena Kumar S/o Late Pardeshi Ram Dhankar Aged About 15 Years
5. Sunder Bai W/o Late Nohru Ram Dhankar Aged About 58 Years

   Appellants No. 3 & 4 being minors represnted by their natural guardian & mother appellant No.1 Smt. Shanti Bai, Wd/o Late Pardeshi Ram Dhankar, All are R/o Doma, Post- Sejbahar, P.S. Tikrapara, Civil & Revenue Distt. Raipur C.G.

---- appellants

Versus

1. Bideshi Ram Yadav & Ors. S/o Sohan Ram Yadav R/o Khaira, Thana- Ghumka, Distt. Rajnandgaon C.G., Present Address- Kanker Roadwej, Near Gandhi Garden, Thana Civil Line, Raipur, Distt. Raipur C.G.
2. M.S. Kanker Travels (Roadwej) R/o Gandhi Garden, Thana- Civil Line, Raipur, Tah. And Distt. Raipur C.G.
3. The New India Insu.Co.Ltd. Thru- Divisional Manager, The New India Insurance Co.Ltd., Madina Manjil, Kachhari Chowk, Jail Road, Raipur, Distt. Raipur C.G.

---- Respondents

For appellants : Shri K.K. Dewangan, Advocate
For Respondent No. 3 : Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board By

21/07/2015

1. This is an appeal against the award dated 16/07/2013 passed in Claim Case No. 45/2011 by the Principal Motor Accident Claims Tribunal,

Raipur (C.G.), whereby as against the claim of Rs. 4,45,000/- was passed.

2. The claim petition was preferred by widow, three children and mother of the deceased with a pleading that on 26/01/2011 the deceased Pardeshi Ram Dhankar was travelling from village Mohla to Raipur in a bus bearing No.C.G.-04-E-1638, owned by Kanker Roadways, the original non-applicant No.2. At the relevant time the bus was driven by Respondent No.1. It was pleaded that while deceased was getting down from the bus near Santoshi Nagar Chowk, Raipur, driver of the bus, i.e., respondent No.1 moved the bus swiftly, as a result of which, he fell down to ground and received injuries. He was immediately admitted to the hospital but during the treatment he died. It was stated that at the time of accident Pardeshiram Dhankar was healthy person and was engaged in driving the tractor. It was stated that the deceased was earning Rs.10,000/- per month and on different heads amount of Rs.14 Lakhs was claimed.

3. In reply to the claim petition, the driver of the offending bus – non applicant No.1 Bideshi Ram Yadav remained ex-parte whereas the non-applicant No.2 owner of the bus resisted the claim on the ground that the compensation amount has been claimed on the notional basis, which is baseless, and therefore, claimants are not entitled to any amount. It was further stated that the at the time of accident the vehicle was insured with original non-applicant No. 3 the New Indian Insurance Company Limited, therefore, insurance company is liable to pay the compensation. The insurance company resisted the claim and stated that accident occurred due to rash and negligent act of the driver. It

was further stated that on the date of accident, the driver of the bus was not having valid license, consequently, it amounts to breach of terms and condition of the Insurance Policy, therefore, the insurance company is not liable to make good the compensation.

4. Learned Tribunal on the basis of evidence, arrived at a finding that at the relevant time the offending vehicle i.e. bus bearing registration number C.G. 04E 1638 was being driven by its driver in rash and negligent manner which caused the injury to Pardeshi Ram Dhankar, due to which, he died. The said finding has not been challenged by either of the parties so in absence of any challenge, the said finding have attained finality.

5. Learned counsel for the appellants/claimants contended that the tribunal has not assessed the income of the deceased in correct perspective and has only assessed to Rs.3000/- per month, whereas it was stated to be Rs.10,000/- per month. Therefore, same should have been suitably enhanced. He further submits that the future prospect has not been awarded which needs reconsideration.

6. Learned counsel for the insurance company supported the award and would submit that the award passed by the Court below do not call any interference and is well merited.

7. I have heard learned counsel for the parties, perused the record and the evidence to assess quantum of assessment. The claimants in this case examined Smt. Shanti Bai, who has stated that her husband's income, at that time of accident, was Rs.10,000/- it was earned by driving the tractor. No further evidence has been produced by the

claimants to substantiate the same. Only oral statement has been made. Therefore, the notional income as assessed by the Tribunal is Rs.3000/- per month is Rs. 36,000/- per year.

8. In order to come to a finding of notional income, the reference is made to Section 163-A of the Motor Vehicles Act. For the sake of brevity, Section 163-a is reproduced hereinbelow:

> "163-A. Special provisions as to payment of compensation of structure formula basis.-- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
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> xxx xxx xxx
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> (2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
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> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time, amend the Second Schedule."

9. As per the Schedule appended to sub-section (3) of section 163-A, the notional income in the year 1994 was shown as Rs.15,000/-. As the Central Government has failed to amend the second schedule as

provided in sub-section 3 of Section 163-A of the Act, the Courts/Tribunals can take judicial notice of 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.

10. Reverting to the present case, the accident in this case had taken place in the year 2011. Therefore, if the hike in price of essential commodities and cost of living between the period 1994 and 2011 are taken into consideration and further taking into the minimum wages which was payable to a labour was ranging between Rs.150 and 200/- in the year 2011, in the opinion of this Court, the notional income taken by the Tribunal i.e. Rs.3,000/- per month are Rs.36,000/- per annum do not call for any interference.

11. Now, if we take future prospects of the deceased into account, he was aged about 47 years at the time of accident and was self employed, therefore, the principles as laid down in the case of ***Rajesh & Others v. Rajbir Singh & others*** reported in ***(2013) 9 SCC 54***, there would be addition of 30% as the deceased aged was in between a age group of about 40 – 50 years. Consequently, there will be addition of Rs.10800/- on Rs. 36,000/- which comes to Rs. 46,800/- i.e. (Rs.36000 + 10800).

12. The claim petition was preferred by five persons, therefore, applying the principles of ***Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another***, reported in ***(2009) 6 SCC 121*** there would be a deduction of ¼ which comes to Rs.11,700/-. So the income is assessed to Rs.46,800/- and if 1/4th amount is deducted from 46,800/-,

claimants' loss of dependency would come to Rs.35,100/-.

13. According to the post mortem report the deceased was aged about 45 years, therefore, the multiplier of 13 would be applicable in the present case. If the claimants' loss of dependency is multiplied by 13, the total loss of dependency would come to Rs.4,56,300/-. Further the amount of Rs. 25,000/- has been awarded by the Tribunal for loss of consortium which, in my opinion, is on lower side. Accordingly, I enhance the amount to Rs.1,00,000/- under the head loss of consortium. Further, the Tribunal awarded a sum of Rs.75,000/- towards loss of love and affection (Rs.25,000/- each i.e. Rs.75,000/-) is maintained. Likewise, the amount of Rs.25,000/- granted for loss of love and affection to the deceased mother is also maintained. The amount of Rs. 20,000/- towards funeral expenses is also accordingly enhanced to Rs. 25,000/-. Therefore, the assessed amount is as under:

Sl. No.	Heads	Calculation
1.	Loss of dependency	Rs.4,56,300/-
2.	Loss of consortium	Rs.1,00,000/-
3.	Loss of Love and Affection	Rs. 75,000/-
4.	Loss of Love and Affection (Mother)	Rs. 25,000/-
5.	Funeral Expenses	Rs. 25,000/-
	Total Compensation	Rs. 6,81,300/-

14. Thus, the total compensation is recomputed as Rs. 6,81,300/-. After deducting Rs.4,45,000/- as awarded by the Tribunal, the enhancement would be Rs. 2,36,300/- in addition to what is already

awarded by the claims Tribunal with interest at the rate of 9% per annum from the date of filing of the claim petition, till its realization.

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 Devanagri language.

16. No order as to costs.

Sd/-

Goutam Bhaduri

Judge

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