NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A (C). No. 1108 of 2013

1. Smt. Rukmani Bai, wife of Jhakanram Yadav, aged about 45 years,

2. Jhakanram Yadav, son of late Chintaram, aged about 47 years,

Both residents of village Paraswani, Post Mandraud, Tahsil Kurud, Civil and Revenue District Dhamtari (C.G.)

---- Appellants

Vs.

1. Krishna Sahu, Son of Lalji Sahu, aged about 23 years, Resident of village Kathouli, Post Naari, Tahsil Kurud, Civil and Revenue District Dhamtari (C.G).

2. Abdul Mufttar, son of Abdul Jabbar, Caste Musalman, R/o K.K. Road, Moudhapara, Raipur, Post Raipur Tahsil, Civil and Revenue District Raipur (C.G).

3. Branch Manager, The New India Insurance Company Limited, Division al Office – Jeevanbima Marg, Pandri, Tahsil, Civil and Revenue District Raipur (C.G).

--- Respondents

For Appellants : Mr. R. K. Pali, Advocate.

For Respondent No.3 : Mr. Raj Awasthi, Advocate.

HON'BLE SHRI JUSTICE GOUTAM BHADURI

JUDGMENT ON BOARD

14/08/2015

1. This is an appeal against the award dated 06.08.2013 passed in Claim Case No. 94/2013 by the Additional Motor Accident Claims Tribunal, (FTC), Dhamtari, Distt. Dhamtari, Chhattisgarh, whereby the claim petition of the claimants was partly allowed by awarding a total compensation of Rs. 3,21,000/- with further interest @ 6% per annum.

2. The claim petition was filed by the claimants mother and father of deceased with averments that on 01.04.2012, deceased Tikesh Kumar Yadav along-with his contractor Kaushal Sahu was going to villages Kirvai and Koundkora on the motor cycle of his contractor as pillion rider. On the way at about 5 p.m., when they reached near a school of village Kaundkora the offending Dumper bearing Reg.No. C.G. 07-C/4398 driven by non-applicant No.1Krishna Sahu in rash and negligent manner forcibly dashed the motorcycle due to which the claimants' son Tikesh died on the spot. The said vehicle No. C.G. 07-C/4398, was owned by Non-applicant No.2 Abdul Muftar and was insured with the non-applicant No. 3 the New India Insurance Company Ltd. It was pleaded that the deceased used to earn Rs.200/- per day by working as Mason and was looking after the parents. Therefore, on different heads, a total compensation of Rs.10,54,000/- was claimed.

3. Non-applicants 1 & 2, driver and owner of the vehicle remained exparte. Non-applicant No.3 contended that on the date of accident, the driver of the offending vehicle did not have any valid and effective driving licence and consequently there has been breach of terms of policy. It was further stated that non-applicant No.3 is not liable to make good the payment and therefore, the claim petition may be dismissed.

4. The Tribunal after evaluating the facts and circumstances of the case and evidence on record arrived at a finding that at the relevant time, the offending vehicle i.e., dumper was being driven in rash and negligent manner which caused accident. Since the said finding is not under challenge by either of the parties, the same is affirmed.

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

6. Learned counsel for the appellants submits that despite evidence on record that the deceased was a skilled labour, as he was working as head mason, the Tribunal has taken the income of Rs.3000/- per month which is very low as on the date of accident i.e. 01.04.2012. It is stated that the wages for skilled labour was Rs.200 - 250 per day during the period. He further submits that the multiplier has also wrongly been applied and no additional amount towards future prospectus has been taken into account. Therefore, considering the age of the deceased, the future prospectus should have been awarded.

7. Per contra, learned counsel for 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.

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

9. The learned Tribunal has assessed the monthly income of the deceased as Rs.3000/- per month. The father of deceased has stated that his son was working as Head Mason and thereby used to earn Rs.200/-. The said statement is corroborated by one Kaushal Sahu (A.W. 2). He also affirmed the nature of avocation of the deceased that he and the deceased were working as Head- Mason in Diamond Contractor and they used to earn Rs.200/- per day. Reading of the entire cross examination of this witness shows that the said fact of income has not been diluted. Admittedly, in this case, no document was placed on record in support of the income.

10. 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.

11. Perusal of the statement of the claimants would show that the deceased belonged to unorganized sector, therefore, it would be difficult to expect that the income would have been documented and it could have been proved by any other factum except making oral statement. This fact also cannot be ignored that the accident in this case has taken place in the year 2012. The claimants have stated that the deceased was working as Mason. Therefore, taking into account the wages of skilled labour which was ranging from Rs. 150 to 200 during the period 2012-2013 and reverting to the present case, as the accident took place in the year 2012 and considering the increase in price of essential commodities during the period from 1994 to 2012, as also taking into the fact the wages which were 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/-.

12. 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 25 years as would be evident from postmortem report Ex.P-5. Considering the fact that the deceased was aged about 25 years at the time of accident, there would be further addition of 50% to the said income of Rs.54,000/- towards future prospects as per the law laid down in case of ***Rajesh & others Vs. Rajbir Singh & others (2013) 9 SCC 54,*** and thereby 50% of amount comes to Rs.27,000/- and total income comes to Rs.81,000/- (54000 + 27000).

13. Coming to the deduction towards personal expenses, the deceased was unmarried and the claim petition has been preferred by 2 persons i.e., father and mother. Therefore, following the principles laid down in ***Sarla Verma V. D.T.C. (2009) 6 SCC 121***, one half (50%) would be deducted from the income. Therefore, after deducting one-half towards personal expenses, the annual dependency comes to Rs.40,500/- (81,000 – 40,500). 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.7,29,000/- (40500 x 18).

14. Under the conventional heads, the learned Claims Tribunal has awarded Rs.5000/- for funeral expenses, Rs.5000/- for loss of love and affection to the mother and father and Rs.5000/- for loss of estate. In the opinion of this court, the amounts 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, I am inclined to award Rs.75,000/- on the head of loss of love and affection to the mother and father and Rs.25,000/- for loss of estate. Further, Rs.5000/- granted for funeral expenses is also enhanced to Rs.25,000/-. 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 added as future prospects	(Rs.54000 + 27000 = Rs.81,000/-
(iii)	One half of (ii) deducted as personal expenses of the deceased	Rs. = 81000 – 40,500 = Rs. 40,500/-
(iv)	Compensation after multiplier of 18 is applied	Rs. 40,500 x 18 = Rs. 7,29,000/-
(v)	Loss of love and affection to the mother and father	Rs. 75,000/-

(vi)	Loss of estate	Rs. 25,000/-
(vii)	Funeral expenses	Rs. 25,000/-
	Total	**Rs.8,54,000/-**

15. Thus the total compensation will be Rs.8,54,000/-. After deducting Rs.,3,21,000/- awarded by the tribunal, the enhancement would be Rs. 5,33,000/-.

16. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 5,33,500/- in addition to what is already awarded.

17. 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.

18. 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

Rao