HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 408 of 2014

1. Abhinav Ubhrani S/o Late Kailash Chandra Ubhrani Aged About 21 Years R/o Sai Parisar, House No. B-02, Shrikant Verma Marg, Bilaspur, Tah. And Distt. Bilaspur C.G.
2. Miss Reetu Ubhrani D/o Kailash Chandra Ubhrani Aged About 23 Years R/o Sai Parisar, House No. B-02, Shrikant Verma Marg, Bilaspur, Tah. And Distt. Bilaspur C.G.

---- Appellants

Versus

1. Ramnaresh Jaiswal S/o Jagannath Jaiswal R/o Kathar, Post-Karodiya, P.S. Rampur Naiki, Distt. Sidhi M.P.
2. Abdul Shahid S/o Abdul Samad R/o Lalkhadan, Mahmand Road, Bilaspur, Tah. Bilaspur, Distt. Bilaspur C.G.
3. The Oriental Insurance Co.Ltd. Through- Divisional Manager, Division Office Rama Trade Centre, First Floor, Near Old Bus Stand, Opposite Rajeev Plaza, Bilaspur, Tah. And Distt. Bilaspur C.G.

---- Respondents

And

MAC No. 409 Of 2014

1. Abhinav Ubhrani S/o Late Kailash Chandra Ubhrani Aged About 21 Years R/o Sai Parisar, House No. B-02, Shrikant Verma Marg, Bilaspur, Tah. And Distt. Bilaspur C.G.
2. Miss Reetu Ubhrani D/o Kailash Chandra Ubhrani Aged About 23 Years R/o Sai Parisar, House No. B-02, Shrikant Verma Marg, Bilaspur, Tah. And Distt. Bilaspur C.G.

----Appellants

Vs

1. Ramnaresh Jaiswal S/o Jagannath Jaiswal R/o Kathar, Post-Karodiya, P.S. Rampur Naiki, Distt. Sidhi M.P.
2. Abdul Shahid S/o Abdul Samad R/o Lalkhadan, Mahmand Road, Bilaspur, Tah. Bilaspur, Distt. Bilaspur C.G.
3. The Oriental Insurance Co.Ltd. Through- Divisional Manager, Division Office Rama Trade Centre, First Floor, Near Old Bus Stand, Opposite Rajeev Plaza, Bilaspur, Tah. And Distt. Bilaspur C.G.

---- Respondents

For Appellant – Shri P.K. Tulsiyan, Advocate.
For Respondent No.2 – Shri Ritesh Verma, Advocate.
For Respondent No.3 – Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

26/08/2015

1. Both these appeals are being heard together being arising out of common award dated 10th February, 2014 passed by the court of Additional Motor Accidents Claims Tribunal (FTC) Bilaspur in Claim Case No.13/13 and 14/13. Both the appeals are filed by the claimants son and daughter of the deceased namely Rajkumari Ubhrani deceased being the mother and Kailash Chandra Ubhrani deceased being father. MAC No. 408/2014 is for enhancement of award with respect to death of mother whereas MAC No.409/2014 is for enhancement of award with respect to death of father.

2. Two separate claim cases were filed by the son and daughter of the deceased Rajkumari Ubhrani and Kailash Chandra Ubhrani. It was pleaded that on 14/04/2011 the mother and father of the claimants along with other family members were coming back from Bhilai to Bilaspur. At the relevant time, car was being driven in a moderate speed on its side. It is further pleaded that at a distance of the car one motorcycle was also moving when they reached near a place Vishrampur Haddi Godam at that time a truck bearing No.C.G. 04/ZA/1258 being driven by original non-applicant No.1 Ramnaresh Jaiswal in a rash and negligent manner initially dashed the motorcycle subsequently it dashed the car. By such impact of accident, both Rajkumari Ubhrani and Kailash Chandra Ubhrani died.

3. With respect to claim for compensation for death of mother it was

stated that deceased Rajkumar Ubhrani was a lady of 42 years and was a house wife also was partner in Raj Industries Flour Mill wherein she used to earn Rs.20,000/- to 30,000/- per month. Consequently, on the death of Rajkumari Ubhrani an amount of Rs.43,70,000/- was claimed. Likewise for death of father namely Kailash Chandra Ubhrani it was stated that Raj Industries Flour Mill was being run by the deceased wherein he used to earn Rs.20,000/- to 30,000/- per month and on different heads an amount of Rs.42,60,000/- was claimed. Original non-applicant No.2 was the owner of the offending vehicle. It was stated in reply that accident happened due to the rash and negligent driving of the car and on the date of accident offending vehicle was being driven by non-applicant No.1 in a moderate speed and was not negligent while driving consequently the non-applicants are not liable for payment. Further it was stated that the vehicle was insured with the Oriental Insurance Company Limited, therefore compensation if any has to be made good by the insurance company.

4. Insurance company contended that the offending truck was being driven in breach of terms of the policy and it was driven without permit or fitness or in breach of the registration. It was further stated that on the date of the accident driver of the truck was not having valid licence. Therefore, insurance cannot be held liable. Insurance company further contended that owner of the car which met with the accident bearing No.C.G. 07/M-4973 is also necessary party. Therefore, in absence of such parties, the claim is liable to be rejected.

5. Tribunal after evaluating the facts and evidence came to finding that at the relevant time on 14/04/2011 the truck bearing No.C.G. 04/ZA/1258 was driven by original non-applicant No.1 in a rash and negligent manner

which caused the accident. Finding was arrived at by the tribunal that because of the impact of such accident the injuries were caused and two persons died in the car. The said finding is not under any challenge by the parties except the appeal for enhancement by the claimants. Therefore, in absence of challenge to the same, same is affirmed.

6. Now only adjudication has to be made with respect to the enhancement of the claim.

7. Learned counsel for the claimants would submit that tribunal has failed to take into account income tax return which is placed on record and proved by the income tax officer but ignoring the income tax return award is passed taking the income to be notional income. It was further stated that future prospect has also not been given and on the conventional head too meager amount has been awarded which also requires re-consideration.

8. Per contra, learned counsel for the insurance company would submit that award is well merited and would submit that though statement has been made that deceased Rajkumari was a partner but no document has been placed on record to establish such fact, therefore no enhancement can be made in the facts of the case. Learned counsel for respondent No.2 supported the award.

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

10. First appeal is bearing No. MAC No.408/2014 is an appeal for death of Rajkumari Ubhrani the mother of the claimants is considered. The claim case in this respect is numbered as 13/2013.

11. Perusal of the award would show that tribunal has assessed

notional income of the deceased to Rs.3000/- by holding that no documents have been filed to show that deceased was partner in Raj Industries which was owned by her husband. As against this evidence which is on record son of the deceased Abhinav Ubhrani has stated that her mother was an associate in Raj Industries Flour Mill and she was a partner. Income has been stated to be Rs.20,000/- to Rs.30,000/-.

12. Income tax return of deceased Rajkumari Ubhrani is also on record of assessment year 2009-2010 as Ex.P-6(C). Return of 2010-2011 is marked as Ex.P-7(c). The income tax return of 2009-2010 shows a income of Rs.1,51,337/- whereas income tax return filed for assessment year 2010-2011 shows income of Rs.1,77,820/-. This return has been proved by Jagdish Sahu, officer of the income tax office. According to this witness return were filed by the deceased and accordingly it is exhibited. Reading cross examination of this witness do not show that any adverse fact has come on record. Perusal of both the records shows that statements have been interchanged. The statement have been attached in the claim case No.14/2013 statement ought to have been in 13/2013 i.e. vice-versa. Since both the cases are tried together, therefore such statement was referred. Reading of the document Ex.P-6 (c) and P-7 (c) would show that return was filed by Rajkumari which bears her signature. Ex.P-6 (c) is dated 25/03/2010 which was filed on 29th March, 2010 and return of Ex.P-7 (c) for assessment year 2010-2011 was signed by the deceased Rajkumari on 27/03/2011 and was filed on 31st March, 2011. Authenticity of the same has been proved and nothing has come on the evidence to rebut the same. It will be presumed that income tax return which is filed will have presumptive value and can be accepted for

assessment of the notional income. So assessment of the income tax return of 2009-2010 average income comes to Rs.1,64,580/-.

13. Therefore the finding of the tribunal ignoring the income tax return cannot be withheld and it is assessed that average income of the deceased on the date of accident was Rs.1,64,580/-. Perusal of the award would show that tribunal has not added any sum towards future prospect. Taking the date of birth as shown in Ex.P-6(c) and 7(c) it is stated to be 23/10/1965 therefore on the date of accident deceased was aged about 46 years of age. Considering the fact that deceased was aged about 46 years at the time of accident, therefore there will be addition of 30% as future prospect as per law laid down in case of ***Rajesh and others Vs. Rajbir Singh & others (2013) 9 SCC 54*** over and above income of Rs.1,64,580/- amount of 30% therefore comes to Rs.49,374/- and thereby by addition of 30% total income comes to Rs.2,13,954/-. Now coming to the deduction towards personal expenses, claim petition was filed by the son and the daughter of the deceased, therefore taking into dependency following the principle laid down in case of ***Sarla Verma Vs. Delhi Transport Corporation, 2009 6 SCC 121,*** 1/3 would be deducted which comes to Rs.71,318/- thereby deduction of Rs.71,318/- from Rs.2,13,954/- which comes to Rs.1,42,636/-. Since deceased was aged about 46 years, multiplier of 13 would be applicable and the amount comes to Rs.18,54,268/-.

14. Under the conventional head learned tribunal has awarded Rs.5000/- for funeral expenses and Rs.5000/- for loss of estate, no award has been granted for loss of love and affection. In the opinion of this court, amount awarded under the conventional head also needs to be re-

assessed in view of the law laid down in case of ***2015 AIR SCW 3577 – Asha Verma Vs. Maharaj Singh and others.*** Therefore, I am inclined to grant Rs.75,000/- for loss of love and affection, Rs.25,000/- for loss of estate. Further more amount of Rs.5000/- granted for funeral expenses is enhanced to Rs.25,000/-. Thus, total compensation to be reassessed is as under:-

S.No.	Heads	Calculation
(i)	Average income	Rs.1,64,580/-
(ii)	30% of (i) above to be added as future prospects	Rs.1,64,580 + Rs.49,374 = Rs.2,13,954/-
(iii)	One third of (ii) deducted as personal expenses of the deceased	Rs.2,13,954 - Rs.71,318 = Rs.1,42,636/-
(iv)	Compensation after multiplier of 13 is applied	Rs.1,42,636 x 13 = Rs.18,54,268/-
(v)	For loss of love and affection	Rs.75,000/-
(vi)	Loss of estate	Rs.25,000/-
(vii)	Funeral expenses	Rs.25,000/-
	Total	Rs.19,79,268/-

15. Thus the total compensation will be Rs.19,79,268/-. After deducting Rs.3,46,000/- awarded by the tribunal, the enhancement would be Rs.16,33,268/-.

16. In the result, the appeal MAC No.408/2014 is partly allowed. The claimants will be entitled to said sum of Rs.16,33,268/- with interest @ 9% per annum from the date of petition in addition to what is already awarded.

17. Now coming to the other claim petition which is MAC No.409/2014 filed is for death of father Khailash Chandra Ubhrani. Claim case was bearing No.14/2013. In such case income of the deceased was assessed to Rs.1 lakh. As against this, the statement of the claimant Abhinav

Ubhrani is seen. He has stated that his father was managing the Raj Industries Flour Mill which was assisted by his mother and father used to earn Rs.20,000/- to Rs.30,000/- per month. To show the income, income tax return Ex.P-14-C and P-15-C has been placed on record. Ex.P-14-C is for assessment year 2009-2010 wherein income is shown as Rs.1,70,089/-.Likewise for assessment year 2010-2011 income is shown as Rs.1,77,198/-. The statement of income would show the said income of Rs.1,77,198/ which appears to have been signed by the deceased. The Ex.P-15 (c), the return was signed by the deceased on 27/03/2011 and was filed on 31st March, 2011. The said document have been proved by Jagdish Sahu officer from the income tax office. He has proved that document that return was filed by the deceased. Consequently, taking into fact that nothing has come in the cross examination to rebut this fact average income of the deceased namely Kailash Chandra Ubhrani is assessed to Rs.1,73,643/-.

18. Perusal of the award would show that tribunal has not added any sum towards future prospect. Here in the instant case according to the income tax return age of the deceased appears to be 48 years. Considering the fact that deceased was aged about 48 years at the time of accident there will be further addition of 30% as future prospect as per law laid down in case of ***Rajesh and others Vs. Rajbir Singh & others (2013) 9 SCC 54*** over and above income of Rs.1,73,643/- i.e. which comes to Rs.52,093/- and the total income is assessed to Rs.2,25,736/-.

19. Now coming to the deduction towards personal expenses of the deceased. Claim petition was filed by the son and the daughter of the deceased, therefore following the principles laid down in case of ***Sarla***

Verma Vs. Delhi Transport Corporation, 2009 6 SCC 121, 1/3rd would be deducted which comes to Rs.75,245/-. Therefore, after deducting 1/3rd from the annual income towards personal expenses annual dependency comes to Rs.1,50,491/-. Since deceased was falling to the age group of 48 years, according to the case of ***Sarla Verma Vs. Delhi Transport Corporation, 2009 6 SCC 121,*** multiplier of 13 would be applicable which comes to Rs.19,56,383/-.

20. Now coming to the conventional head. Rs.5000/- has been awarded for loss of estate and Rs.5000/- for funeral expenses. No award has been awarded for loss of love and affection. In the opinion of this court under the conventional head amount needs to be re-assessed. In view of the law laid in case of ***2015 AIR SCW 3577 – Asha Verma Vs. Maharaj Singh and others,*** I am inclined to grant Rs.75,000/- for loss of love and affection, Rs.50,000/- for loss of estate. Further Rs.5000/- granted for funeral expenses is enhanced to Rs.25,000/-. Thus, total compensation to be reassessed is as under:-

S.No.	Heads	Calculation
(i)	Average income	Rs.1,73,643/-
(ii)	30% of (i) above to be added as future prospects	Rs.1,73,643 + Rs.52,093 = Rs.2,25,736/-
(iii)	One third of (ii) deducted as personal expenses of the deceased	Rs.2,25,736 – Rs.75,245 = Rs.1,50,491/-
(iv)	Compensation after multiplier of 13 is applied	Rs.1,50,491 x 13 = Rs.19,56,383/-
(v)	For loss of love and affection	Rs.75,000/-
(vi)	Loss of estate	Rs.50,000/-
(vii)	Funeral expenses	Rs.25,000/-
	Total	Rs.21,06,383/-

21. Thus the total compensation will be Rs.21,06,383/-. After deducting Rs.8,76,671/- awarded by the tribunal, the enhancement would be Rs.12,29,712/-.

22. In the result, the appeal MAC No.409/2014 is partly allowed. The claimants will be entitled to said sum of Rs.12,29,712/- with interest @ 9% per annum from the date of petition in addition to what is already awarded.

23. The Registry is further directed to communicate the claimants in writing the "amount of award enhanced in both the appeals" as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language.

Sd/-

(Goutam Bhaduri)

JUDGE

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