NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No. 618 of 2003

1. Smt Kuleshwari Bai, W/o Aamar Singh, aged about 39 years, House Wife
2. Amar Singh, s/o Sarahu Yadav, aged 42 years

Both are R/o Sanjay Nagar, Raipur, Tah & Disst- Raipur, Chhattisgarh

---- Appellants

Versus

1. Singh Pal Singh, s/o Mukhtiyar Singh, R/o Lodhi Para, Pandari, Raipur, Chhattisgarh
2. The New India Insurance Co.Ltd, Branch Office- Bajarang Market, through, Divisional Manager, Divisional Office, Kutchheri Chowk, Jail Road, Raipur, Chhattisgarh

---- Respondents

For Appellants	:	None.
For Respondent No.2	:	Shri Shreekumar Agrawal, Senior Advocate with Shri Anand Gupta, Advocate

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Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

15.07.2016

1) This appeal for enhancement of compensation by the claimants is directed against the award dated 10.03.2003 passed by the learned First Additional Motor Accident Claims Tribunal, Raipur (for short 'the Tribunal) in Claim Case No.126 of 2002.

2) Since the only issue involved in this appeal is as to what is the just compensation to be granted, the other facts relating to accident are not being taken into consideration.

3) The claimants are parents of deceased- Tukaram Yadav, who died in an accident which took place on 28.07.2002. The claimants had filed a

claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short “the Act”), in which the learned Tribunal came to the conclusion that the income of the deceased was ₹3,080/- per month and calculated the compensation accordingly. The claimants in this appeal claimed that the income of the deceased was ₹.4,000/- per month. If this plea of the claimants is accepted, then no claim petition under Section 163-A of the Act would in fact lie before the Tribunal. This is a pure finding of fact and since the claim petition was under Section 163-A of the Act, the income taken by the Tribunal brings the claim petition within the scope of Section 163-A of the Act, otherwise, the Apex Court in Oriental Insurance Company Ltd. v. Hansrajbhai V. Kodala & Others {(2001) 5 SCC 175} has clearly held that where the income is more than ₹40,000/- per annum, no claim petition under Section 163-A of the Act can be filed.

4) However, even if the income of the deceased is taken at ₹3,080/- per month, the deduction could only be 1/3rd in terms of the Second Schedule of the Act. Since the deceased on the date of accident was aged about 24 years, the appropriate multiplier would be 17. Therefore, the compensation works out to ₹3,080 x 12 x 17 = ₹6,28,320. Out of this amount, 1/3rd has to be deduced towards personal expenses of the deceased, leaving the balance of ₹4,19,089/-. which is rounded off to ₹4,19,000/-. In addition, the claimants are also held entitled to ₹2,000 towards funeral expenses and ₹2,500 towards loss of estate. Therefore, the total compensation is assessed at (₹4,19,000/- + ₹2000 + ₹2500) = ₹4,23,500/-. The award is accordingly enhanced from ₹1,68,320/- to ₹4,23,500/- i.e. ₹2,55,180/-. The claimants shall also be entitled to interest on the enhanced sum of ₹2,55,180/- at the rate of 9% per annum from the date of filing of the claim petition till deposit of the amount.

5) By now, the Insurance Company must have paid the amount awarded by the Tribunal. The entire enhanced amount of compensation i.e. ₹2,55,180/- shall be payable only to the mother of the deceased and out of which ₹1,00,000/- shall be released in her favour and the balance amount alongwith interest shall be kept in a fixed deposit for a period of five years and thereafter the amount shall be released in her favour. The interest accruing on the fixed deposit shall be paid to the mother of the deceased by remitting it to her bank account on quarterly basis.

6) The appeal is disposed of in the aforesaid terms. No order as to costs.

7) Send down the lower Court records forthwith.

Sd/-
(Deepak Gupta)
Chief Justice

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