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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 285 of 2007

1. Smt. Hafiza Begum W/o Late Babbu Khan, aged about 42 years.
2. Ku. Rubina Bano son of Late Babbu Khan, aged about 18 years.
3. Sahil Khan son of Late Babbu Khan, aged about 4 years.

Minors 2 and 3 through natural guardian mother Smt. Hafiza Begum.

All Residents of Mamta Nagar, Street No. 6, Bajrang Bali Near Well, Rajnandgaon, Tahsil and District Rajnandgaon, Chhattisgarh.

---- Appellants

Versus

1. The Manager, Indian Boiler Farm, GE Road, Rajnandgaon, District Rajnandgaon, Chhattisgarh.
2. Branch Manager, The New India Assurance Company Limited, Kamthi Line, Rajnandgaon, Chhattisgarh.

---- Respondents

For Appellant	: Shri A.C.Sahu, Advocate.
For Respondent No.1	: Shri Malay Shrivastava, Advocate.
For Respondent No. 2	: Shri Dashrath Gupta, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

22/07/2016

1. This appeal by the claimants under the Workmen's Compensation Act, now renamed as Employees' Compensation Act, has been filed for enhancement of compensation being aggrieved by the award dated 11.09.2006 passed by the Commissioner, Labour Court, Rajnandgaon in Case No. 54/WC Act/2005/Fatal.

2. This appeal was admitted on the following substantial question of law vide order dated 13.02.2014:

> "Whether while passing the impugned order the Commissioner Workman has rightly applied the relevant factor as required under the law?"

3. In fact, the question has not been framed properly. The question should have been as follows:

> "Whether the learned Commissioner totally misconstrued the notice sent by the wife while assessing the income of the deceased?"

4. The short dispute is with regard to the income of the deceased. The Tribunal held that the income of the deceased was Rs. 3000/- per month whereas the claimants on the basis of certificate issued by the employer claimed that the income was was Rs. 4,628/-. While coming to the conclusion that the income was Rs. 3000/- per month, the Commissioner has relied upon the notice sent by the wife to the employer after the accident had taken place.

5. I have carefully gone through the notice and in this notice, it is stated that the deceased was getting salary of Rs. 3000/- per month and he also used to get Rs. 100/- per day as T.A for going outside and therefore, his monthly wages was Rs. 6000/- per month. This by no stretch of imagination can be said as an admission of the wife that the income of the deceased was Rs. 3000/- per month. Therefore, the learned Commissioner totally misconstrued and misread the document which has caused gross injustice. The income of the deceased was more than Rs. 4000/- per month. However, for the purpose of compensation, it can be taken maximum of only Rs. 4000/- at the relevant time. Therefore, after deducting 50%, it comes to Rs. 2000/- and the relevant factor is 169.44. Thus, the total compensation works out to Rs. 3,38,880/-. On this amount, the claimants shall also be entitled to interest at the rate of 12% per annum from the date of accident till payment of the amount.

6. Needless to say that while calculating the enhanced amount, the Respondent/Insurance Company shall be entitled to adjust the amount of compensation and interest which has already been paid.

7. Accordingly, this appeal is allowed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Amit