

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Miscellaneous Appeal (C) No. 623 of 2007

1. Anjani Chauhan, Aged about 20 years.
2. Ku. Anusuiya Chauhan, Aged about 18 years.
3. Ajay Chauhan (Minor) Aged 16 years.
4. Archana Chauhan (Minor) aged 14 years.
5. Berkha Chauhan (Minor) Aged 9 years.

(Appellants No. 1 to 5 are all the children of Late Shri Hernarayan Chauhan).

6. Java Ram Chauhan S/o Late Bartiya Chauhan, Aged about 77 years.
7. Smt. Jamuna Bai W/o Java Ram Chauhan, Aged about 64 years.

(Appellants No. 3 to 5 are minors) Through her Elder Sister namely Anusuiya Chauhan D/o Late Shri Hemnarayan Chauhan (Appellant No. 2 herein).

All the appellants are resident of Qr. No. Super F-1030, CSEB Korba, District Korba, Chhattisgarh

---- Appellants

Versus

1. Mohammad Iqbal Ahmad S/o Gulam Rasul R/o Jama Masjid Pariser, Korba, District Korba Chhattisgarh. (Vehicle Driver & Owner)
2. Branch Manager, Through New India Insurance Company, Branch Office Transport Nagar, Korba, PS Tahsil District Korba, Chhattisgarh.

---- Respondents

For Appellants	: None.
For Respondents	: None.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

24/06/2016

1. None appears on behalf of the parties. The appeal is of the year 2007 and relates to an accident which took place in the year 2004. Since none has appeared, I have taken assistance of Shri Ghanshyam Patel, Advocate who has helped me in going through the records.

2. The appeal is directed against the award of Motor Accidents Claims Tribunal (F.T.C.) Korba (hereinafter called 'the MACT') dated 19.02.2007 passed in Claims Case No. 77 of 2006, whereby he awarded compensation of Rs. 5,60,250/- alongwith interest by taking the income of the deceased to be Rs. 5,815/- per month.

3. The only issue involved in this appeal is with regard to the quantum of compensation, therefore, I proceed to decide the appeal on merits. Since I have only to decide the quantum of compensation, it is not necessary to go into other details of the case.

4. The undisputed facts of the case are that the deceased Hernarayan Chauhan was 48 years of age and he was employed as Joint Assistant Grade II in the Coal Handling Plant of the Chhattisgarh State Electricity Board. He died in an accident on 27.08.2004. His last pay certificate has been proved on record which shows that his total emoluments were Rs. 15,000/- per month, however, the learned Tribunal has deducted more than Rs. 9000/- which the deceased was getting deducted from his salary on account of payment of installments of loan taken earlier, GPF etc. and assessed the income at only Rs. 5815/- per month, and calculated the compensation accordingly. Even with regard to funeral expenses, only a sum of Rs. 2000/- has been awarded. Nothing has been awarded to the wife for loss of consortium. Therefore, this appeal praying for enhancement of the compensation.

5. From the last pay certificate, it is clear that the total emoluments of the deceased would be Rs. 10,000/- per month. Tortfeasor of the wrong doer cannot take advantage of the savings of the deceased. These are not the deductions in the nature of income tax or other taxes which can be reduced from the income. On an income of Rs. 15,000/- per month, the Court can take judicial note that virtually no tax would be payable. What was being deducted was from the salary of the

deceased was his savings towards Provident Fund, General Provident Fund and some payments being made for repayment of loan which he may have taken earlier. The learned MACT erred in making deductions. No deductions are required to be made in this regard and therefore, I hold that the income of the deceased has to be taken as Rs. 15,000/- per month.

6. Since the deceased was aged 48 years and was close to 50 years, I do not want to add further anything for future prospects. There are as many as seven claimants. Even if the father is excluded, there would be six claimants and therefore the deduction as per the law laid down in *Sarla Verma (Smt) & Others v. Delhi Transport Corporation & Another* {(2009) 6 SCC 121} would be 1/5 and thus loss of estate would be Rs. 12,000/- per month or Rs. 1,44,000/- per annum. The appropriate multiplier for this age group is 13 as per *Sarla Verma (supra)* and therefore, the compensation works out to Rs. 18,72,000/-. The claimants are also held entitled to Rs. 18,000/- for funeral expenses and the widow is entitled to Rs. 50,000/- for loss of consortium. Therefore, the total amount of compensation is assessed at Rs. 19,40,000/-. Appellant No. 1 to 5 and 7 are held entitled to a sum of Rs. 3,00,000/- each and Appellant No. 6 is held entitled to the remaining amount i.e. Rs. 1,40,000/-. The Appellants shall also be entitled to proportionate interest at the rate of 9% per annum from the date of filing of the claim petition till the date of actual payment.

7. The appeal is accordingly allowed. The award of the MACT is modified and the compensation enhanced from Rs. 5,60,250/- to Rs. 18,72,000/- with interest as aforesaid.

8. The Court records appreciation of Shri Ghanshyam Patel, Advocate for rendering his valuable assistance.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE