NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MISC. APPEAL (C) NO. 586 OF 2010

1. Smt. Kiran Kujur, W/o Late Balkumar, aged about 25 years,
2. Ku. Lainsi Prinska Kujur, D/o Late Balkumar, aged about 5 years
3. Ku. Nainsi Fosta Kujur, D/o Late Balkumar, aged about 5 years,

The appellant no.2 & 3 minors through natural guardian mother Smt. Kiran Kujur (Appellant no.1)

4. Shri Sadhuram, S/o Kundo, aged about 62 years,
5. Smt. Domini Kujur, W/o Shri Sadhuram, aged about 60 years,

All resident of village Jarhi, S.E.C.L. Colony, Mines Quarter no. 580, Police Station Bhatgaon, Tahsil Pratappur, District Sarguja (C.G.)

… Appellants

Versus

1. Ajay Kumar Tiwari, S/o Late S.P. Tiwari, aged about 30 years, occupation Driver, R/o Village Budhar, Post Patna, Police Station Patna, Tahsil Baikunthpur, District Korea (C.G.)

2. Ramchandra Gupta, S/o Late Sarju Gupta, aged about 52 years, owner of Vehicle, R/o Ambikapur, Tahsil and Police Station Ambikapur, District Surguja (C.G.)

3. The United India Insurance Company Ltd., through Branch Manager Ambikapur, near of Ram Mandir, Ambikapur, Tahsil and Police Station Ambikapur, District Surguja (C.G.)

… Respondents

For Appellants	:	Mr. Rakesh Pandey, Advocate.
For Respondent No.3	:	Mr. Dashrath Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/07/2016

1. This is an appeal filed by the Appellants/Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short, “the Act”) against the award dated 30.1.2010 passed by Additional Motor Accidents Claims Tribunal (FTC), Pratappur, Dist. Surguja (C.G.) (for short, “the Tribunal”) in Claim Case No.56/2008, for enhancement of the compensation awarded by the Tribunal.

2. By impugned award dated 30.1.2010, a total sum of Rs.17,46,200/- with simple interest thereon at the rate of 7.5% per annum from the date of filing of claim application till its realisation has been awarded by the Tribunal as compensation in favour of the Appellants/Claimants on account of death of Balkumar (hereinafter called 'deceased') in the accident in question, fastening the liability for payment of the same jointly and severally upon Respondents No. 1, 2 and 3 who were driver, owner and insurer respectively of vehicle (Bus), bearing Registration No. CG15-A/4476 (hereinafter called “offending vehicle”).

3. Brief facts of the case as per the claim application are that at the relevant point of time the deceased, who was aged about 35 years, was posted as Overman at Shivani Project of South Eastern Coalfields Limited, Bhatgaon Colliery, and was drawing a monthly salary of Rs.39,000/-. On 6.8.2008 at about 4:30 p.m., when the deceased after getting Appellants No. 1, 2 and 3 onto the bus was going to take his motorcycle which was parked at the other side of the road in the corridor of the house of one Amarjeet Sardar and at the same time the Respondent No.1, Ajay Kumar Tiwari, rashly and negligently driving the offending vehicle hit the deceased which resulted in sustaining of grievous injuries to the deceased. The deceased was then immediately taken to the Ambikapur hospital for treatment. Thereafter, on account of his grievous injuries he was referred to Apollo Hospital at Bilaspur for his better treatment where he was treated from 9.8.2008 to 14.8.2008. However, on 14.8.2008 at 4:00 pm he died at the hospital.

4. This gave rise to filing of the claim application under Section 166 of the Act, out of which this appeal arises, by the Appellants/Claimants for a total compensation of Rs.1,18,00,000/- for the death of deceased in the said vehicular accident.

5. Learned Counsel for the Appellants/Claimants has contended that the Tribunal has committed a manifest error of law and on fact while deducting 1/3rd towards personal and living expenses of the deceased. He further contended that looking to the age of the deceased which was 35 years, 50% promotional prospects and increase in future income were to be taken into consideration which has not been considered by the Tribunal. It was next contended that the amount under the conventional heads also is on the lower side. Lastly, the counsel has contended that the Tribunal has committed error in holding that there had been 50% negligence on the part of the deceased, which is a finding contrary to the evidence available on record. Counsel for the Appellants/Claimants has placed his reliance on 2009 (6) SCC 121 **[Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and Another]**, 2012 (6) SCC 421 **(Santosh Devi Vs. National Insurance Co. Ltd.)**, 2013 (9) SCC 54 **(Rajesh and Others Vs. Rajbir Singh and Others)** and 2015 (6) SCC **(Munnalal Jain and Another Vs. Vipin Kumar Sharma and Others)**.

6. On the other hand, learned Counsel for Respondent No.3-Insurance Company has supported the impugned award so far as quantum of compensation is concerned and has submitted that the same is quite just and reasonable and needs no further enhancement by this Court in exercise of its appellate jurisdiction.

7. I have heard the learned Counsel for the parties and perused the records of the case including the impugned judgment.

8. The Tribunal after recording the finding that there had been negligence to the extent of 50% on the part of deceased has awarded a total compensation of Rs.17,46,200/- for the death of deceased in the vehicular accident which had taken place on 6.8.2008.

9. So far as 50% negligence on the part of deceased is concerned, from the material available on record, it is clear that there was negligence on the part of deceased while crossing the road. Hence, in view of the totality of facts and circumstances of the case as well as material available on record, it cannot be said that the finding arrived at by the Tribunal so far as 50% negligence on the part of the deceased is not proper and justified and the said finding in the opinion of this Court does not require any interference.

10. So far as the amount of compensation is concerned, it is not in dispute that the deceased was posted as Overman at Bhatgaon Colliery of South Eastern Coalfields Ltd., and on the basis of evidence available on record, it stands proved that monthly salary of the deceased was Rs.25,540/-. Looking to the permanent nature of job of the deceased and in view of his age which has been assessed as 32-35 years at the time of his death, 50% promotional prospects have to be taken into consideration while computing the total loss of dependency of the Appellants/Claimants in view of the law laid down by the Supreme Court in the case of Sarla Verma (*supra*). Likewise in due course of time the salary also would have been revised many times which also would have increased the future income of the deceased. Thus, the Tribunal while computing the income of the deceased should have also added 50% of his present salary towards future income. Accordingly after adding 50% of Rs.25,540/- towards promotional prospects and future income of the deceased, the income of the deceased comes to Rs.38,310/- per month and Rs.4,59,720/- per annum. After deducting Rs.46,944/- towards income tax liabilities as per the then prevailing slab of income tax, the annual salary of the deceased can safely be taken as Rs.4,12,776/-. Further, the number of dependents including the parents of the deceased has been shown as five and as such at-least 1/4th ought to have been deducted towards personal living expenses of deceased whereas the Tribunal has deducted 1/3rd towards it which is not justified in view of the law laid down by the Supreme Court in the case of Sarla Verma (*supra*) and Santosh Devi (*supra*). Accordingly, after deducting 1/4th i.e. Rs.1,03,194/-, the remaining i.e. Rs.3,09,582/- comes to as annual loss of dependency of the Appellants/Claimants. In addition, as the age of the deceased was about 32-35 years at the time of his death on account of the vehicular accident in question therefore as per the law laid down by the Supreme Court in Sarla Verma (s*upra*), a multiplier of 16 will have to be applied for computing the total loss of dependency while the Tribunal has applied the multiplier of 17 which is on a higher side. Thus, by applying multiplier of 16, the total loss of dependency comes to Rs.49,53,312/- (3,09,582x16) which after deducting 50% towards contributory negligence comes to Rs.24,76,656/-. In addition to this, the compensation awarded by the Tribunal to the conventional heads is also on a very low side. In the opinion of this Court ends of justice would meet if the Appellants/Claimants are granted a lump sum amount of Rs.50,000/- towards conventional heads instead of Rs.9,500/- (i.e., Rs.5000/- towards loss of consortium + Rs.2000/- as funeral expenses + Rs.2500/- for loss of estate) which has been awarded by the Tribunal. As such, the Appellants/Claimants shall be entitled to a total compensation of Rs.25,26,656/- with interest thereon.

11. The view of this Court so far as enhancing of compensation by adding 50% towards future prospects stands fortified by the decisions of the Supreme Court made in the case of Rajesh (*supra*) and Munna Lal Jain (*supra*).

12. The same analogy had in the past also been laid down by the Supreme Court in the matters of Sarla Verma (*supra*) and Santosh Devi (*supra*).

13. In the result, the appeal is allowed in part. The impugned award dated 30.1.2010 is hereby modified and accordingly enhanced from Rs.17,46,200/- to **Rs.25,26,656/- (Twenty five Lacs Twenty Six Thousand Six Hundred and Fifty Six)** which the Appellants/Claimants are entitled to get jointly and severally from the Respondents with simple interest thereon at the rate of 7.5% per annum from the date of filing of the claim application before the Tribunal till its realisation. The amount, if any, paid/deposited by the Respondents shall be adjusted from the enhanced amount of compensation payable to Appellants/Claimants. Apportionment of the shares and the amount to be deposited in fixed deposit shall be made in the same proportion as directed by the Tribunal. Rest of the conditions of the impugned award shall remain intact. No costs.

Sd/-
(P. Sam Koshy)
Judge

/sharad/