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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 812 of 2010

1. Basant Lal Jaiswal S/o Late Salik Ram, aged about 45 years, R/o village Manhgai Tehsil Surajpur, District Sarguja, CG
2. Smt. Indrawati W/o Basant Lal Jaiswal, aged about 42 years, R/o village Manhgai, Tehsil Surajpur, District Sarguja, CG

---- Appellants

Versus

1. Murari Sahu S/o Sonairam, aged about 30 years, R/o village Manpur, Tehsil Surajpur, District Sarguja, C.G.
2. Roopnarayan S/o Nanak Ram, aged about 35 years, R/o village Kurunwa, Kenapara, Police Station Vishrampur, Tehsil Surajpur, District Sarguja, CG
3. The Oriental Insurance Company Limited through Branch Manager, Ambikapur, Ambedkar Chowk, Manendragarh Road, Ambikapur, District Sarguja, CG

---- Respondents

For Appellants	:	Shri Vaibhav Goverdhan, Advocate
For Respondent no. 1	:	Shri Surfaraj Khan, Advocate
For Respondent no.2	:	None
For Respondent no.3	:	Shri R. N. Pusty, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/10/2016

This is a claimants' appeal under Section 173 of the Motor Vehicles Act for enhancement of compensation. By way of the present appeal, the appellant/claimants have sought for modification/setting aside of the order dated 18.03.2010 passed by the 4th Additional Motor Accident Claims Tribunal (FTC), Ambikapur, District Sarguja in Motor Accident Claim Case No. 69/2008 in respect of the present appellants.

2. Some of the undisputed facts in the instant case are that the vehicle involved in the present case was a mini bus bearing registration No. CG

10/ZA-0128 which met with an accident on 19.01.2007 resulting in the death of Anil Kumar Jaiswal, the son of the appellants. The appellants preferred a claim application under Section 166 Motor Vehicles Act seeking for compensation on account of the death of their son. The learned Tribunal vide impugned award dated 18.03.2010 allowed the same and ordered for payment of compensation to the tune of Rs.2,20,000/- along with interest @ 9% per annum from the date of filing of the application.

3. It was the case of the claimants that at the time accident, the deceased was a student of Class XIIth (+2) and as per his Class XIIth mark sheet Ex.P-6 the date of birth of the deceased is 17.12.1982 i.e. the age of the deceased on the date of his death was 24 years. It was the further case of the claimants that the deceased Anil Kumar was an electrician and with the said skill he used to work in Uttam Electrical shop who had issued an experience certificate Ex.P-5 from which it is reflected that the deceased was being paid Rs.2,000/- per month for the work of electrician. The Tribunal has taken Rs.2,500/- as an average monthly income of the deceased. Accordingly, Rs.30,000/- to be as annual income from which 1/3 was deducted towards self expenses. The remaining amount of Rs. 20,000/- was taken into consideration for calculation which was multiplied with a multiplier of 10 totalling Rs.2,00,000/-. In addition, Rs.20,000/- was awarded for funeral and other expenses. Thus, the Tribunal came to the conclusion that the claimants would be entitled for total compensation of Rs.2,20,000/-.

4. Counsel for the appellants submits that taking into consideration the age of the deceased, the multiplier of 10 which has been applied by the Tribunal is apparently erroneous and is not sustainable. He submits that the multiplier in the case of a deceased whose age was between 20 to 25 has to be 17. Since the age of the deceased Anil Kumar at the time of accident was 24 years, the multiplier in the instant case had to be applied 17 in stead of 10 which has been applied by the Tribunal. According to the counsel for the appellants, if we take into consideration Schedule 2 of the Motor Vehicles Act and also the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121,** the ratio laid down in the said judgment would entitle the claimants for compensation at the multiplier of 17 and therefore, the compensation awarded by the Tribunal is liable to be modified to that extent.

5. Counsel for the appellants further submits that the Court below should have also taken into consideration the fact that the deceased was only 24 years at the time of accident and there would have been definitely growth in his annual income, therefore, the future growth in his income should have also been taken into consideration while calculating the compensation. Counsel for the appellants submits that the amount of Rs.2,500/- which has been taken into consideration by the Tribunal at the time of accident to be his monthly income as an electrician would have definitely been more than double by this time and therefore the calculation should have been done at least 100% increase in his income for the purpose of calculation. So far as the future growth in income is concerned, counsel for the appellants relied upon the judgment of the Supreme Court in the case of **Munnalal Jain and Another v. Vipin Kumar Sharma and Others** reported in **(2015) 6 SCC 347.**

6. Counsel for the appellants also submits that the amount awarded towards other conventional heads is also on the lower side and the same deserves to be enhanced.

7. Counsel appearing for the respondents however submits that taking into consideration the evidences which have come on record particularly the fact that the only proof of income which has been produced by the claimants is an experience certificate issued by a local electric shop showing the deceased to be an skilled electrician. But the fact that the claimants have not been able to prove any documents to show that the deceased had undertaken any course by which he had gained knowledge of electrician and therefore the same cannot be given much weightage. He further submits that the amount of income that has been taken into consideration for the purpose of calculating compensation was on the higher side in the year 2007 and therefore the amount of compensation awarded does not warrant any interference.

8. Having considered the rival contention put forth by the counsel appearing on either side and also taking into consideration the evidences which have come on record without disputing the factual matrix of the case so far as the date of birth and the age of the deceased is concerned and also not questioning the finding of the Tribunal accepting Rs. 2,500/- to be his monthly income by performing the job of an electrician, all that this Court intends to decide is that whether the multiplier applied by the Tribunal was proper, legal and justified. The law in this regard has now well settled right from the time of Sarla Verma case and others and it has reached to the stage of the 2nd Schedule of the Motor Vehicles Act being enacted for the purpose of calculating the compensation. Therefore, it needs no further discussion to decide and hold that the multiplier which has been applied by the Tribunal in the present case that of 10 is not proper, legal and justified and it ought to have been in accordance with Schedule 2 of the Motor Vehicles Act. Thus, the multiplier for the purpose of calculating the compensation shall be 17 in stead of 10.

9. So far as the growth of income of the deceased in future is concerned, it has not been taken into consideration by the Tribunal for the purpose of quantifying the compensation. There cannot be a doubt in any-body's mind in reaching to the conclusion that the monthly income of the deceased would have definitely increased manifold on account of the fact that admittedly the deceased was a student of Class 12th aged about 24 years at the time of accident and he was also an electrician. Therefore, he could earn much more than what he was getting at that time. Thus, Rs.2,500/- calculated by the Tribunal would have definitely got enhanced substantially in due course. Even otherwise, Rs.2,500/- was less than the minimum wages of an unskilled labour even on the date of the judgment of the Tribunal i.e. 18.03.2010. Since the deceased was an electrician, he would fall within the category of a skilled person and his minimum wages would have been much more than the amount assessed by the Tribunal.

10. So far as the future prospects is concerned, the Supreme Court in 2013 A.C.J. 1403 (Rajesh and Others v. Rajbir Singh and others) has categorically held relying upon the judgment rendered in 2012 A.C.J. 1428 (SC) (Santosh Devi v. National Insurance Company Limited) that it would be reasonable to say that a person who is self employed or employed will get increase in income over the period of times and if such person becomes victim of an accident, the future prospects has to be taken into consideration for calculating the amount of compensation.

11. The Supreme Court recently in the case of Munnalal Jain and Another v. Vipin Kumar Sharma and Others reported in (2015) 6 SCC 347 relying upon the case of Rajesh (supra) has held in paragraph-10 as under:

> "As far as future prospects are concerned, in Rajesh v. Rajbir Singh, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. To quote: (SCC p.61, para 8)
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> "8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not

> 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."
> The deceased being of the age of 30 years, 50% is the required addition."

12. Taking into consideration the over all facts and circumstances of the case, in the opinion of this Court, 50% increase in the wages towards the future prospects would be appropriate and the monthly income of the deceased deserves to be enhanced by another 50% of what has been taken by the Tribunal.

13. Accordingly, the monthly income after deduction towards self expenses of Rs.20,000/- is enhanced by 50% which comes to Rs.30,000/-. When the amount of Rs.30,000/- is multiplied by the multiplier of 17 it would make the compensation to be Rs. 5,10,000/-. Further, taking into consideration the peculiar facts and circumstances of the case, the compensation towards love and affection, consortium and funeral expenses are all clubbed together and enhanced from Rs.20,000 to Rs.40,000/-. Thus, the total compensation of Rs. 5,50,000/- would be payable to the appellants.

14. Accordingly the present appeal stands allowed. The impugned award dated 18.03.2010 passed by the Tribunal in Motor Accident Claim Case No. 69 of 2008 stands modified to the extent that the present appellants shall be entitled for compensation of Rs.5,50,000/- from which the amount of compensation which has already been received by the appellant/claimants shall be adjusted. It is ordered that the balance of amount shall be payable by the Insurance Company within a period of 60 days from the date of receipt of copy of this order with the condition of pay and recover from the owner and driver of the vehicle. It is further held that the enhanced amount shall also carry interest @ 6% per annum from the date of application till the date of realization.

15. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola