NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MISC. APPEAL NO. 2414 OF 1999

1. Mst. Shantibai, W/o Late Shri Rajesh Kumar Kawartiya, aged about 22 years.
2. Heemanshu, S/o Late Shri Rajesh Kumar Kawartiya, through mother Shantibai.
3. Mst. Teekaitain Bai, W/o Late Shri Santram Kawartiya, aged about 56 years.
   All three R/o Gram Akaltara, Tahsil Janjgir, District Bilaspur (C.G.)

… Appellants

Versus

1. Sunderlal Agrawal, R/o Azad Chowk, Katni, District Jabalpur.
2. Jagdish Singh, S/o Shivpal Singh Kurmi, aged about 25 years, R/o Chandy Rai, District Allahabad (U.P.)
3. The Branch Manager, The Oriental Insurance Co. Ltd., New Basti Katni (M.P.)

… Respondents

For Appellants	:	Ms. M. Asha, Advocate.
For Respondent No.3	:	Mr. Ratan Pusty, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/09/2016

1. The present is an appeal filed by Appellants-Claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 10.8.1999 passed by the Sixth Additional Motor Accidents Claims Tribunal, Bilaspur in Claim Case No.02/1999, for enhancement of compensation.

2. By impugned award dated 10.8.1999, a total sum of Rs.1,82,000/- with interest thereon at the rate of 12% per annum, has been awarded by the Tribunal as compensation in favour of Appellants-Claimants, who are widow, son and mother of deceased Rajesh Kumar, fastening the liability for payment of the same jointly and severally upon the Respondents, who were owner, driver and insurer respectively of Truck No. MBJ-5970.

3. According to Appellants-Claimants, at the time of accident the deceased was working as Muneem and used to earn Rs.2750/- per month. On 17.4.1997, Respondent No.2 by rashly and negligently driving the said Truck, dashed the motorcycle on which the deceased Rajesh Kumar and his maternal uncle Bisahu Ram were travelling and which resulted in their death due to sustaining of grievous injuries.

4. This gave rise to the filing of the claim petition by Appellants-Claimants before the Tribunal, out of which this appeal arises, for a total compensation of Rs.14,03,000/- for the death of the deceased in the said vehicular accident.

5. Learned Counsel for Appellants-Claimants has contended that the Tribunal has committed a manifest error of law and fact in assessing the income of deceased on the lower side and also in applying a lower multiplier and, thus, awarded a meagre amount of compensation which needs to be modified and suitably enhanced.

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. Heard learned Counsel for the parties and perused the records of the case as well as the impugned award.

8. So far as assessment of compensation is concerned, the learned Tribunal has assessed the monthly income of the deceased as Rs.1500/- per month and after deducting 1/3rd towards personal and self expenses of the deceased and thereafter by applying the multiplier of 14 has awarded a total compensation of Rs.1,82,000/- (including amount under conventional heads) with simple interest at the rate of 12% per annum from the date of filing of claim petition till realisation.

9. So far as the income of the deceased is concerned, AW-1, Tikaitin Bai, mother of the deceased, in his statement has stated that the deceased was working as Muneem under Lakshman Mukeem and used to give Rs.2500/- for household expenses. AW-2, Ratan Lal also has stated in his statement that the deceased was working as Muneem for five years in the mine owned by Lakshman Mukeem and was earning Rs.2750/- per month. According to AW-2 Ratan Lal, he himself was working as Chowkidar in the said mine and was earning Rs.1000/- per month. However, in the absence of documentary evidence the Tribunal has assessed the monthly income of the deceased as Rs.1500/-. Looking to the totality of facts and circumstances, evidence available on record, year of the accident i.e., 1997 and particularly considering the nature of work as also considering the fact that the deceased was working for the five years in said mine, it would be most reasonable and appropriate to assess the monthly income of the deceased at Rs.2000/-, which comes to Rs.24,000/- per annum.

10. Further, the Tribunal has not taken into consideration the future prospects of the decased. As such taking into consideration the fact that at the time of accident the deceased was about 30 years of age and his wage has been accepted to be Rs.2000/- per month (Rs.24,000/- p.a) and in times to come there would had been definitely an increase in the said wage, under normal circumstances it would be proper if the calculation of compensation is made taking into consideration at least 50% rise on his future income to have been added for the purpose of calculating the quantum of compensation in view of the law laid down by the Supreme Court in the case of **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and Another** [2009 (6) SCC 121] and **Rajesh and Others**

Vs. Rajbir Singh and Others [2013 (9) SCC 54]. Thus, by adding 50% of rise in future income to the income, the actual income of the deceased comes to Rs.36000/- per annum.

11. As regards the age of the deceased, as per postmortem report (Exhibit P-5) his age has been assessed as 30 years. As deceased was a married man and Appellants/Claimants are his widow, son and mother, therefore, 1/3rd has to be deducted towards personal and self expenses of the deceased. As such after deducting 1/3rd, the remaining i.e. Rs.24000/- is the annual loss of dependency.

12. In addition, a multiplier has to be adopted on the basis of the age of the deceased, which in the instant case is 30 years. Hence, looking to the age of the deceased a multiplier of 17 has to be applied for computing the total loss of dependency in view of the law laid down by the Supreme Court in the case of **Sarla Verma** (supra). Whereas, the Tribunal has applied a multiplier of 14 which is incorrect. Thus, by applying the multiplier of 17, the total loss of dependency comes to Rs.4,08,000/-.

13. Furthermore, the compensation amount awarded to Appellant No.1/wife of the deceased for loss of consortium i.e., Rs.6000/- appears to be on the lower side and which in the opinion of this Court should have been at least Rs.25,000/-. Likewise, Appellants No. 2 and 3, who are son and mother of the deceased, have been awarded Rs.3000/- towards love and affection, and further Rs.1000/- has been awarded for funeral expenses, which also appears to be on the lower side and which according to this Court should have been enhanced by at least Rs.20,000/- each respectively.

14. As such, the compensation has to be reassessed as follows :

Sl. No.	Heads	Calculation
(i)	Income	Rs.24000/- p.a.
(ii)	50% (i) above to be added as future prospects	Rs.24000+Rs.12000=Rs.36000 p.a.
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	Rs.36000-Rs.12000 = Rs.24000 p.a
(iv)	Compensation after multiplier of 17 is applied	Rs.24000x17 = Rs.4,08,000/-
(v)	Loss of consortium	Rs.25,000/-
(vi)	Loss of love and affection	Rs.20,000/-
(vii)	Funeral Expenses	Rs.20,000/-
Total Compensation Awarded		**Rs.4,73,000/-**

15. So far as rate of interest awarded on the amount of compensation is concerned, the learned Tribunal has awarded interest at the rate of 12% per annum from the date of filing of claim petition till its realisation. The accident is of the year 1997. Therefore, looking to the totality of facts and circumstances and the rate of interest in the present days, awarding of interest at the rate of 6% on the enhanced amount of compensation from the date of filing of claim petition till its realisation would serve the ends of justice.

16. In the result, the appeal is allowed in part. The impugned award dated 10.8.1999 is hereby modified and accordingly enhanced from Rs.1,82,000/- to **Rs.4,73,000/-** (Four Lakh and Seventy Three Thousand only). If any amount which has already been paid/deposited shall be adjusted from the enhanced amount of compensation. The enhanced amount of compensation shall carry simple interest at the rate of 6% per annum from the date of filing of the claim application before the Tribunal till its realisation. Rest of the conditions of the impugned award shall remain intact. No order asto costs.

Sd/-
(P. Sam Koshy)
Judge

/shard/