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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 566 OF 2008

1. Bhrigunath Ram, S/o Sevanram, aged about 65 years
2. Neeraj Kumar, aged about 17 years, S/o Late Ramjanam Ram
3. Dhiraj Kumar, aged about 15 years, S/o Late Ramjanam Ram [Appellant No. 2 & 3 being minor on behalf of through their legal guardian grand father appellant no.1 Bhrigunath Ram]
   All Caste – Kumhar, All R/o Village- Patthalgaon, Police Station & Tehsil- Patthalgaon, District Jashpur Nagar (C.G.)

… Appellants

versus

1. Khageshwar Prasad Mahakul (Yadav), S/o Premlal Yadav, R/o – Village Deewanpur (Bhadatarai), Poilce Station- Patthalgaon, District Jashpur Nagar (C.G.)
2. Smt. Shanti Devi, W/o Ramjanam Ram Prajapati, R/o Village & Post Patthalgaon, District- Jashpur Nagar (C.G.)
3. The Oriental Insurance Company Limited, Branch Office Market, Raigarh, District Raigarh (C.G.)

… Respondents

For Appellant	:	Mr. Shivendu Pandya, Advocate.
For Respondent No.3	:	Mr. Sudhir Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/10/2017

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the Chief Motor Accident Claims Tribunal, Mahasamund, vide its award dated 22.3.2007 passed in Claim Case No. 42/2006.

2. Vide the impugned award dated 22.3.2007, the Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in a death case, has awarded a compensation of Rs.13,04,653/- to the claimants, with interest thereon at the rate of 6% per annum from the date of filing of the claim application. Of the said amount, Rs.2,21,981/- is towards the medical expenses and Rs.2000/- is towards the conventional head.

3. Learned counsel for the appellants-claimants seeking suitable enhancement of the compensation awarded by the Tribunal submits that it is a case where the income of the deceased has not been properly assessed while computing the compensation. According to him, the deceased was a Sub Engineer under the Public Health Engineering department and was drawing a gross salary of Rs.13,557/- but the Tribunal has taken the income of only Rs.11,257/-. The deductions so made are not justified, as the same were the statutory deductions which is a part of income of the deceased. Thus, the total income of Rs.13,557/- should have been taken into account for the purpose of quantifying the compensation. In addition, since the deceased was aged around 40 years, the multiplier of 15 should had been applied instead of 12. Likewise, future prospects also should had been taken into consideration for computing the compensation. Lastly, the compensation awarded under the conventional head is also unreasonably low.

4. Learned Counsel for respondent no.3-insurance company however opposes the appeal and submits that the impugned award is just and reasonable, warranting no interference as the same is based on evidence.

5. Having considered the contentions put forth on either side and on perusal of the record, particularly the pay-slip of the deceased for the month of May, 2006, which is a pay-slip for the previous month from the date of accident, it would show that the deductions which have been made from the gross salary, were towards the GPF, GIS etc., which would otherwise also be a part of income of the deceased and thus for the purpose of calculating the compensation, the Tribunal ought to have taken Rs.13,557/- as the monthly income of the deceased less 10% towards the income tax, which would come to approximately Rs.12,201/-, instead of

Rs.11,257/- which the Tribunal has accepted. Thus, for the purpose of quantifying the compensation, this Court assesses the yearly income of the deceased at Rs.1,46,412/-.

6. If 30% of Rs.1,46,412/-, i.e. Rs.43,924/- is added towards the future prospects, it would come to Rs.1,90,336/- of which if 1/3rd, i.e. Rs.63,445/-, is deducted towards the personal expenses, the amount would become Rs. 1,26,891/-. In view of the decision of the Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others** v. **Delhi Transport Corporation and Another**, **2009 (6) SCC 121**, the multiplier to be applied would be 15, instead of 12 which the Tribunal has applied, and which if applied in the instant case, the total figure would become Rs. 19,03,365/-.

7. It is accordingly ordered that the claimants shall be entitled for an amount of Rs.19,03,365/- towards the loss of dependency, instead of Rs.10,80,672/- which has been awarded by the Tribunal.

8. In addition, the claimants shall be entitled for the amount of compensation as awarded by the Tribunal towards medical expenses to the tune of Rs.2,21,981/-.

9. Further, the amount of compensation awarded by the Tribunal under the conventional head is also unreasonably low and therefore applying the ratio laid down by the Hon'ble Supreme Court in the case of **Rajesh and Others** v. **Rajbir Singh and Others**, **2013 (9) SCC 54**, a lump sum compensation of Rs.1,00,000/- under this head in the opinion of this Court would meet the ends of justice and it is ordered accordingly.

10. It is thus ordered that the claimants shall be entitled to receive a total compensation of Rs.22,25,346/-, instead of Rs.13,04,653/- which the Tribunal has awarded.

11. In the result, the appeal is allowed and the impugned award stands modified to the extent that the appellants-claimants are entitled to get a total compensation of Rs.22,25,346/- along with interest thereon at the same rate as has been awarded by the Tribunal. Rest of the award remains intact.

Sd/-
(P. Sam Koshy)
Judge

/sharad/