NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.898 of 2008

1. Muchu Kumar Bariha S/o Shri Jhankari Bariha, aged about 52 years.
2. Smt.Sukanti Bariha S/o Shri Muchu Kumar Bariha, aged about 50 years.
3. Smt.Sunabati Bariha Wd/o Late Shri Sadhuram Bariha, aged about 29 years.
4. Kumari Jasmati Bariha S/o Late Shri Sadhuram Bariha, aged about 6 years, Minor through natural guardian mother Smt.Sunabati Bariha, appellant No.3.

All are R/o village Bandlimal Post Pandaripani, Tahsil Saraipali, District Mahasamund (C.G.) at present R/o Imlibhata Mahasamund, District Mahasamund (C.G.).

---Appellants

Versus

1. Dolamani Pradhan S/o Shri Karunakar Pradhan, aged about 30 years, R/o village Ganiyaripali, Post Singhoda, P.S.Saraipali, District Mahasamund (C.G.).
2. Karunakar Pradhan S/o Shri Khidro Pradhan, aged about 60 years, R/o Village Ganiyaripali, Post Singhoda, P.S.Saraipali, District Mahasamund (C.G.).
3. United India Insurance Company Limited, through : Divisional Manager, United India Insurance Company Limited, Krishna Complex Kachahari Chowk, Raipur Tahsil and District Raipur (C.G.).

---Respondents

For appellants	:	Shri Shikhar Sharma, Advocate.
For respondent No.3/ Insurance Company	:	Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/11/2017

1. Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 12/12/2007 passed by the learned Motor Accident Claims Tribunal, Mahasamund in Motor Accident Claim Case No.29/2006.

2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has awarded the compensation of Rs.2,44,000/- along with interest @ 6% per annum from the date of application.

3. The counsel for the appellants submits, that the income assessed by the Tribunal, the multiplier applied and the deductions made were on contrary to the

settled principles of law so far as the compensation under the Motor Vehicle Act is concerned. He further submits, that the income under future prospects have also not been awarded and thus, prayed for the amount of compensation to be suitably enhanced.

4. The counsel for the Insurance Company however opposing the appeal submits, that the income assessed by the Tribunal and the compensation awarded seems to be just and reasonable and that there is no scope of any interference with the impugned award and accordingly prayed for the rejection of the appeal.

5. Having heard the contentions put forth on either side and on perusal of record this court is of the opinion, that in the instant case the accident was took place in March-2006, where the minimum income of a person would had been somewhere around Rs.150-200/- per day i.e. Rs.4,500-6,000/- per month. However, since, there is no proof of the income produced by the claimants, this court assesses the income at Rs.4,000/- per month instead of Rs.3,000/- as assessed by the Tribunal. In addition, in the light of the recent larger bench decision of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors. (SLP Civil No. 25590/2014, decided on 31/10/2017)***, this court assesses the income under future prospects at 40% which in the instant case assessing income at Rs.4,000/- would be Rs.1,600/- which would bring the monthly income at Rs.5,600/- and the annual income at Rs.67,200/-. If considering the total number of claimants to be 4 1/4th is deducted towards personal expenses, the remaining amount would be Rs.50,400/- which if multiplied by applying multiplier of 16, the amount would reach to Rs.8,06,400/-. It is ordered accordingly, that the claimants shall be entitled for the compensation of Rs.8,06,400/- towards loss of dependency.

6. So far as the compensation under the conventional head is concerned this court is of the opinion, that ends of justice would meet if a lump sum compensation of Rs.43,600/- is granted under this head with which the total compensation payable to the claimants would reach to Rs.8,50,000/- instead of

Rs.2,44,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

7. So far as the liability of Insurance is concerned, the finding of the Tribunal shall remain intact in as much as the amount of compensation shall be deposit by the Insurance Company first and then recover the same from the owner and the driver.

8. The appeal of the claimants thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit