NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.458 of 2012

1. Nandlal Yadav S/o Late Halalkhor Yadav, aged about 42 years.
2. Smt.Fuleshvary Bai Yadav W/o Nandlal Yadav, aged about 40 years. Both are R/o Village – Santoshi Nager, Raipur, P.S.Tikarapara, District Raipur (Chhattisgarh).

---Appellants

Versus

1. Rajkumar Markam S/o Dhaniji Markam, R/o Village Sonhary Po.Singapur District Dhamtary (C.G.).
2. Radhe Lal Sinha S/o Rupsingh Sinha, R/o village Murkera, Tahsil Kurud, District – dhamtary (C.G.)
3. Reliance General Insurance Company Ltd., through – Branch Manager fourth mala Ravibhavan Raipur, District Raipur (C.G.)
4. The Oriental Insurance Co.Ltd., Through its Branch Manager, Divisional Office Kachehari Chowk, Jel Road Raipur (C.G.)

---Respondents

For appellant	:	Shri A.L.Singroul, Advocate.
For respondent Nos.1 & 2	:	Shri Vikas Pandey under instruction of Shri Lokesh Singh, Advocate.
For respondent No.3	:	Shri Sourabh Sharma, Advocate.
For respondent No.4	:	Shri R.N.Pusty, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act challenging the award dated 06/03/2012 passed by the 5th Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No.49/2011. Vide the said impugned award the Tribunal in a Claim Case under Section 166 of the Motor Vehicle Act has awarded the compensation of Rs.1,95,000/- along with interest @ 9% per annum from the date of application.

2. The appeal is preferred by the claimant challenging the exoneration of the Insurance Company as also the compensation awarded being on the lower side.

3. The contention of the counsel for the appellant is that, the notional income assessed by the Tribunal is on the lower side and therefore the same deserves to be assessed on the higher side while quantifying the compensation. According to the counsel for the appellant, since the date of accident was 18/03/2010 where the minimum wages which the Tribunal should had been assessed is Rs.4,500/- monthly, but the Tribunal has only taken Rs.3,000/- per month as the notional income of the deceased. He further submits that, the Tribunal has also not considered the income towards future prospects as also the multiplier applied was not proper in as much as it should had been 18, but the Tribunal has applied the multiplier of only 10 while quantifying the compensation.

4. The counsel for the respondents however opposing the appeal submits that, the award seems to be just and reasonable considering the fact that, the deceased was a 15 year old young boy and was a student and thus he was not having any earning capacity and therefore the compensation awarded does not warrant any interference.

5. Having considered the rival contentions put forth on either side and on perusal of record this court is of the opinion that, as regards the liability part is concerned, the contention of the counsel for the appellant is that, the Tribunal has not properly appreciated the document Exhibit-P/7 is not acceptable for the reason that, the Insurance Company has led evidence before the Tribunal producing the carbon copy of the document which was relied upon by the counsel for the appellant where it clearly reflects that, the date of issuance of policy was shown to be 23/03/2010 and valid till 23/02/2011 whereas the date in the document which was being allegedly used by the owner to show that the vehicle was duly insured appears different. However, the original of the same could not be

produced by the owner before the Tribunal. The owner as well as the driver have remained ex-parti in spite of proper service before the Trial Court. The impugned judgment of fastening the liability upon the owner and the driver have also not being challenged by the owner and the driver and this fact of the case was against the owner and the driver and therefore the liability which has been fixed by the Tribunal does not warrant any interference.

6. As regards the enhancement of the compensation is concerned, this court again is of the opinion that, considering the fact that the deceased was a 15 years old student, the income assessed of Rs.36,000/- yearly by the Tribunal is fair and reasonable and does not warrant any interference. However, this court is of the opinion that, while quantifying the compensation, the Tribunal also should have taken into account the income towards future prospects which would had been 50% of the notional income and the multiplier to be applied in the light of the decision laid down by the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009 {6} SCC 121]*** should had been 18 instead of 10. It is ordered accordingly.

7. Further, this court is also of the opinion that, considering the death of a young student aged around 15 years and the period of death being March-2010, the compensation under the conventional head also appears to be lower side and the same deserves suitable enhancement.

8. Accordingly, if Rs.3,000/- is accepted as the monthly income of the deceased, the yearly income would be Rs.36,000/- of which if 50% of the said amount i.e. Rs.18,000/- is added towards future prospects, the amount would reach to Rs.54,000/- of which if 50% is deducted towards personal expenses, the amount would come to Rs.27,000/- which if multiplied by applying multiplier of 18, the amount would become

Rs.4,86,000/-. It is ordered accordingly that the claimant shall be entitled for loss of dependency of amount of Rs.4,86,000/-. In addition, this court is of the opinion that ends of justice would meet if a lump sum compensation of Rs.1,00,000/- is granted under the conventional head. It is ordered accordingly. Therefore, the claimant shall be entitled for total compensation of Rs.5,86,000/- instead of Rs.1,95,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

9. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit