

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 951 OF 2008

1. Anil Kumar Kound, aged about 18 years,
2. Neel Kumar Kound, aged about 15 years, through Appellant No.1, legal guardian Anil Kumar Kound, elder brother,
Both are S/o Late Madan Kound and are R/o Village- Mednipur, Tahsil- Basna, District Mahasamund (C.G.)

... Appellants

Versus

1. Loknath Sao, aged 40 years, S/o Shri Likhan Sao, R/o Village- Kurchundi, Thana-Basna, Tahsil-Basna, District Mahasamund (C.G.)
2. Pawan Kumar Agrawal, S/o Shri Rishikesh Agrawal, aged 40 years, R/o Village Basna, Thana- Basna, Tahsil- Basna, District Mahasamund (C.G.)
3. The Oriental Insurance Co. Ltd., Divisional Office Kutchery Chowk, Madina Building Raipur (C.G.)

... Respondents

For Appellants	:	Mr. J.N. Nande, Advocate.
For Respondents No. 1 & 2	:	Mr. Prateek Sharma, Advocate.
For Respondent No.3	:	Mr. N.K. Malviya, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/08/2017

1. The present is the claimants' appeal under Section 173 of the Motor Vehicles Act, 1988. Assail is to the award dated 6.5.2008 passed by the Chief Motor Accident Claims Tribunal, Mahasamund, in Claim Case No. 25 of 2008.
2. Vide the said impugned award, the Tribunal, in a proceeding under Section 166 of the Motor Vehicle Act, in a death case of the mother of the claimants, has awarded a compensation of Rs.1,22,000/- with interest at the rate of 6% per annum payable from the date of filing of the claim case till the amount of the compensation is finally realized.
3. Facts of the case in brief are that on 22.4.2007 when the deceased, Cheeni Bai, was travelling in a Tractor-Trolley, bearing Registration No. MP23-GA/2945 & 2946, the tractor turned turtle and as a result of which Cheeni Bai died. The two claimants are the children of the deceased, who

had filed the claim case before the Tribunal. The Tribunal after the completion of the pleadings, vide the impugned award, held that the claimants shall be entitled for a compensation of Rs.1,22,000/- with 6% interest per annum.

4. It is this award which has been challenged by the claimants in the present appeal seeking enhancement of the compensation.

5. Learned counsel for the claimants submits that it is a case where the claimants had pleaded before the Court below that their mother used to work as a labourer and that she was earning approximately Rs.1800/- a month. According to the counsel for the claimants, this assumption which has been taken by the Tribunal is on the basis of the statement of the claimants who were minor at the time of the accident and who were not fully aware of the actual income that the deceased was earning. He would further submit that the amount of money which even an unskilled worker was earning during the relevant period of time would have been nothing less than Rs.150/- a day as the accident was not an old accident but it is an accident that took place on 22.4.2007. At that point of time, the minimum wage of a labourer also would have been more than Rs.150/- per day.

6. Thus, even if we take the minimum of the wages of Rs.150/- that a labourer would have been earning, the monthly income would come to Rs.4500/-. We, therefore, hold that the monthly income of the deceased at the relevant point of time would be Rs.4500/- instead of Rs.1500/- that has been assessed by the Tribunal.

7. Learned counsel for the claimants further submits that the Tribunal has also erred inasmuch as not taking the income under the future prospects for the purpose of quantifying the compensation. In addition, there is no compensation whatsoever has been paid to the claimants

under the conventional heads except for an amount of Rs.2000/- paid for the funeral expenses, which is extremely on the lower side and deserves enhancement.

8. So far as the compensation under the future prospects is concerned, the law in this regard is by now well settled by the Hon'ble Supreme Court right from the judgment of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and Another** [2009 (6) SCC 121] till **Rajesh and Others v. Rajbir Singh and Others** [2013 (9) SCC 54] wherein the Apex Court has categorically held that if the age of the deceased was less than 40 years then the future income also should be borne in mind for the purpose of calculating the income of the deceased. Accordingly, in the instant case, 50% of Rs.4500/- should be taken towards quantifying the income of the deceased. Thus, adding 50% towards the future prospects, monthly income of the deceased would reach to Rs. 6750/- of which if 1/3rd is deducted towards the personal expenses, the net figure would be Rs.4500/- which if multiplied by 12 would make it Rs.54,000/- as the yearly income. Considering the age of the deceased to be somewhere between 35-40, the multiplier which should have been applied for the purpose of calculation of compensation under the Schedule of the Motor Vehicles Act will be 16 and if Rs.54,000/- is multiplied by applying the multiplier of 16, the net figure comes to Rs.8,64,000/-. It is accordingly ordered that the claimants shall be entitled to Rs.8,64,000/- towards the loss of dependency.

9. Further, when we peruse the award it also reflects that under the conventional heads also the Tribunal has not awarded any compensation to the claimants except for Rs.2000/- towards funeral expenses. Considering the entire facts and circumstances of the case and also the amount of compensation quantified by this Court, this Court is of the

opinion that ends of justice would meet if the amount of compensation payable to the claimants under the other heads is fixed at a lump sum amount of Rs.36,000/- so that the total compensation payable to the claimants would be Rs. 9,00,000/- and it is thus ordered.

10. The appeal is allowed accordingly, holding that the claimants shall be entitled for a total compensation of Rs.9,00,000/- including Rs.1,22,000/- which has been awarded by the Tribunal, with interest thereon at the same rate as has been awarded by the Tribunal. Rest of the conditions of the award shall remain intact.

Sd/-
(P. Sam Koshy)
Judge

/sharad/