NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1406 of 2017

1. Smt. Radhika Sahu W/o Late Kamlesh Sahu, aged about 41 years, R/o Village Shivpuri Jamul, P.S. Jamul, Tahsil and District Durg, Chhattisgarh
2. Hemant Sahu S/o Late Kamlesh Sahu, aged about 18 years, R/o Village Shivpuri Jamul, P.S. Jamul, Tahsil and District Durg, Chhattisgarh
3. Bhushan Sahu S/o Late Kamlesh Sahu, aged about 19 years, R/o Village Shivpuri Jamul, P.S. Jamul, Tahsil and District Durg, Chhattisgarh
4. Dinesh Sahu S/o Late Kamlesh Sahu, aged about 23 years, R/o Village Shivpuri Jamul, P.S. Jamul, Tahsil and District Durg, Chhattisgarh
5. Smt. Pusaiya Sahu W/o Late Chinta Ram Sahu, aged about 70 years, R/o Village Shivpuri Jamul, P.S. Jamul, Tahsil and District Durg, Chhattisgarh
6. Smt. Tikeshwari Sahu W/o Khilawan Sahu, aged about 21 years, R/o Akola, P.S. Kumhari, Tahsil and District Durg, Chhattisgarh
7. Smt. Dhaneshwari Sahu W/o Thaneshwar Sahu, aged about 22 years, R/o Village Surdung, P.S. Kumhari, Tahsil and District Durg, Chhattisgarh ....(Claimants)

---- Appellants

Versus

1. Ravi Nishad S/o Hari Nishad, aged about 24 years, R/o Pulgaon Chowk, P.S. Pulgaon, Tahsil and District Durg, Chhattisgarh ....(Driver of Truck No. C.G.12 C-2940)
2. Harshad Gawade S/o Abhay Gawade, aged about 27 years, R/o Sector-8, C-12, K.C.A. Sector-6, Bhilai, Tahsil and District Durg, Chhattisgarh ....(Owner of Truck No. C.G.12 C 2940)
3. Oriental Insurance Company Limited, through the Branch Manager, Branch Office, near Rajendra Park Chowk, G.E.Road, Durg, Tahsil and District Durg, Chhattisgarh ....(Insurance of Truck No. C.G.12 C 2940)

---- Respondents

For Appellants	:	Shri Praveen Ku. Dhurandhar, Advocate
For Respondent No.3	:	Shri Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

22/11/2017

Present is a claimants' appeal under Section 173 of the Motor Vehicles Act assailing the award dated 17.07.2017 passed by the 8th Additional Motor Accident Claims Tribunal, Durg (CG) in Motor Accident Claim Case No. 83/2016. Vide the impugned award the Tribunal in a death case under Section 166 of MV Act has awarded a compensation of Rs.9,72,100/- with interest at the rate of 9% per annum from the date of application.

2. The only dispute which the claimants raised in the present appeal is that the income of the deceased has not been properly assessed by the Tribunal while quantifying the compensation. Counsel for the claimants submits that there was a wage certificate produced before the Tribunal which shows that the wage of the deceased for the month of September, 2015 was Rs.7,575.41/- and this piece of evidence is corroborated by the witness AW-3 Krishna Sharma, an employee of the department where the deceased was working who in his evidence has also stated that in the month of October, 2015 the salary of the deceased was that of Rs.8,570/-.

3. A perusal of the record it reflects that there is not much which has been extracted from the witness AW-3 examined before the Tribunal and the document so produced, therefore, the assessment of Rs.4,500/- as the monthly income of the deceased by the Tribunal seems to be unreasonably low considering the period of accident to be October, 2015. Under any circumstance, in October, 2015, even an unskilled labour would have been earning more than Rs.250/- a day which by itself would bring the income at

Rs.7,500/- a month. In the instant case, it is alleged that the deceased was a skilled labour where his income would have been more. Therefore, the monthly income of the deceased deserves to be and is accordingly enhanced to Rs.7,500/- a month in stead of Rs.4,500/- as assessed by the Tribunal.

4. Thus, taking Rs.7,500/- as the monthly income of the deceased, this Court proceeds to calculate the compensation accordingly. As per the recent larger bench decision of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** decided on 31st October, 2017, the claimants would be entitled for 25% of the income towards future prospects which would make the monthly income of the deceased at Rs.9,375/- and the yearly income at Rs.1,12,500/-. If 1/4th of the said amount is deducted towards personal expenses, the amount comes to Rs.84,375/- which if multiplied applying the multiplier of 14, the amount would come to Rs.11,81,250/- towards loss of dependency. Considering the total number of claimants and most of them being minor children, this Court is of the opinion that the compensation awarded under conventional head by the Tribunal does not warrant any interference. The claimants thus shall be entitled for Rs.2,35,000/- under the conventional head making the total compensation at Rs.14,16,250/-. Thus, the claimants shall be entitled for a total compensation of Rs.14,16,250/- in stead of Rs.9,72,100/- as awarded by the Tribunal.

5. However, taking into consideration the facts and circumstances of the case, particularly the prevailing bank rates, this court is of the opinion that the rate of interest assessed by the Tribunal seems to be on the higher side and the same is therefore reduced to @ 6% per annum in stead of 9% as fixed by the Tribunal. The reduced rate of interest shall be applicable only on the enhanced portion of compensation as the entire compensation awarded by the Tribunal has already been deposited by the Insurance Company.

6. With the aforesaid modification with the quantum and the rate of interest, the appeal stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola