NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 597 of 2009

Padum Ram Tundan S/o Shri Vasdas Tundan, Aged about 38 years R/o village Chutchutiya, PS & Tah. Simga, Distt. Raipur (CG).

---- Appellant

Versus

1. Ghasiram S/o Shri Ramcharan Yadav, aged about 36 years, R/o village Mahamaya Para, Simga, PS & Tehsil Simga, Distt. Raipur (CG).
2. Raj Kumar S/o Ram Swarup Soni, R/o village Simga, District Raipur (CG).
3. The New India Insurance Co. Ltd. Divisional Office 1st Floor Madina Building, Jail Road, Raipur (CG).

---- Respondents

For Appellant	:	Shri RS Patel, Advocate.
For Respondent No.1	:	Smt. Renu Kochar, Advocate.
For Respondent No.2	:	Shri Shobhit Kosta, Advocate.
For respondent No.3	:	Shri Anand Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

07.11.2017

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimant seeking enhancement of compensation against the award dated 29.03.2007 passed by the 1st Additional Motor Accident Claims Tribunal Baloda Bazar, in Claim Case No.31/2006. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.2,00,000/- to the claimants along with interest @ 7 percent per annum from the date of application. While passing the award, the Tribunal has exonerated the insurance company of its liability and have fastened the liability of payment of compensation upon the owner and driver of offending

vehicle Matador-407 bearing registration No.CG-04-G-5288.

2. During the pendency of appeal, the appellant No.2 has expired. Counsel for the appellants prays for and is permitted to delete the name of appellant No.2 from the array of cause title during the course of day. Now the appeal would only survive for appellant No.1, the father of the deceased.
3. It is a case where on 15.04.2005 the deceased, aged about 20 years, son of appellant No.1, met with an accidental death. He was working as a Mason at the relevant point of time. The Tribunal has assessed his yearly income at Rs.12000/- and have proceeded and awarded compensation of Rs.2,00,000/-
4. Learned counsel for the appellant submits that the date of accident is April, 2005 and during the relevant point of time the minimum income of even an skilled labour was more than Rs.100/- a day and therefore, the assessment of income at Rs.12000/- yearly assessed by the Tribunal is unreasonably low and prays for suitable enhancement. The Tribunal has also not considered future prospects and the compensation awarded under conventional heads are also extremely low.
5. Counsel for the respondents however opposing the appeal submits that the award passed by the Tribunal is just and reasonable and was based on the evidence which have come on record and the same do not warrant any interference as there was no proof so far as employment or income of the deceased is concerned.
6. Considering the facts and circumstances of the case this court finds

the owner in the instant case have also preferred an appeal before this court vide MAC No.673 of 2007 which got dismissed on 13.07.2011. Thus, in the given factual matrix of the case, the liability which has been fastened upon the owner and driver of the offending vehicle stands affirmed. The only issue left is to see whether the compensation deserves to be enhanced or not.

7. Considering the date of accident i.e. April, 2005, indisputably even an unskilled labour would have been earning Rs.100/- per day which would bring the monthly income at 3000/-. Though the claimant have claimed that the deceased was working as Mason, but in the absence of evidence in this regard, we accept the deceased to be working as labour and assess his monthly income at Rs.3000/- accepting the minimum wages to be Rs.100/- per day.

8. Keeping in view the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimants shall be entitled for 40 percent of the income towards future prospects.

9. Accordingly, accepting the yearly income of the deceased at Rs.36000/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.50,400/-, of which if 50 percent is deducted towards personal expenses considering the fact that deceased was a bachelor, the income would come to Rs.25,200/-, which if multiplied applying the multiplier of 18, the compensation would reach to Rs.4,53,600/-. Thus, it is ordered that the claimants shall be entitled for Rs.4,53,600/- for loss of dependency.

10. Further, this court is of the opinion that the claimants shall also be entitled for a lump sum compensation of Rs.46,400/- under conventional heads. Thus, the total compensation payable to the claimant would become Rs. 5,00,000/-. It is ordered accordingly that the claimant shall be entitled for a total compensation of Rs.5,00,000/- instead of Rs.2,00,000/-.
11. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.
12. Accordingly,the appeal is allowed. The liability of payment of compensation also would be that on the owner of the offending vehicle as has been ordered by the Tribunal.

Sd/-
(P. Sam Koshy)
Judge

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