NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 899 of 2006

1. Smt. Sita Bai, aged about 22 years, Widow of Purushottam Patel
2. Ku. Pooja, aged about 03 years, D/o Purushottam Patel, represented through her mother Smt. Sita Bai (appellant no.1)
3. Smt. Sukhmati Bai, aged about 42 years, W/o Bhojram Patel
4. Shri Bhojram Patel, aged about 48 years, S/o Tiketram Patel
   All resident of village Bandhuwapara, Post Kodiya, P S Seepat, Tahsil Seepat, District Bilaspur (CG)

---- Appellants

Versus

1. Shri Satyanarayan Pandey S/o Vyas Narayan Pandey, R/o village Bandhuwapara, Post Kodia, P.S. & Tahsil Seepat, District Bilaspur (CG)

2.a. Smt. Binda Devi D/o late Ram Jivan Pandey, R/o village Khapari, Takhatpur, Tahsil Takhatpur, District Bilaspur (CG)

2.b. Smt. Rajeshwari D/o late Shri Ram Jivan Pandey, R/o Kishore Nagar, Bilaspur, Tahsil & District Bilaspur (CG)

2.c. Smt. Rama Bai D/o late Shri Ram Jivan Pandey, R/o Sankargarh, Sahdol.

2.d. Smt. Shyama Bai D/o late Shri Ramjivan Pandey, R/o Nayapara, Golbazar, Raipur (CG)

3. The United India Insurance Company Limited, through Divisional Manager, Divisional Office – Bilaspur, Tahsil & District Bilaspur (CG)

---- Respondents

For Appellants	:	Shri Pawan Kesharwani, Advocate
For Respondent No.3	:	Shri Hari Bhagat Agrawal, Sr. Advocate along with Pankaj Agrawal, Advocate
For Respondents 1 & 2.(b)	:	Shri Avinash Chand Sahu, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

12/09/2017

The present appeal is under Section 173 of the Motor Vehicles Act preferred by the claimants. The challenge is to the award dated 24.12.2005 passed by the 8th Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No. 75/2004 whereby the Tribunal has awarded compensation of Rs.2,74,500/- to the claimants with interest @ 8% from the date of application. It was also ordered by the Tribunal that if the compensation was not deposited within two months, the same would carry interest @ 10% from the date of award.

2. The case of the appellants in brief is that the deceased Purushottam Patel aged around 25 years met with an accidental death on 16.05.2002. The appellants are the wife, daughter and parents of the deceased. They had filed a claim case under Section 166 of the MV Act and the Tribunal vide impugned award has granted compensation to the tune of Rs.2,74,500/- with interest @ 8% from the date of application.

3. Contention of the counsel for the appellants is that the income which has been taken by the Tribunal is on the lower side in as much as the date of accident being of the year 2002, the minimum income of the deceased would have been much more than Rs.2,000/- a month as has been assessed by the Tribunal. Even if the notional income is taken into account for the said period, the same would have been at least Rs.3,000/- a month which makes to Rs.36,000/- yearly. He submits that the notional income as per the judgment of the Supreme Court in the case of **Kishan Gopal and another Vs. Lala and Others** reported in **(2014) 1 SCC 244** ought to have been Rs.30,000/- yearly in stead of Rs.24,000/- as has been taken by the Tribunal. According to the appellants no compensation has been granted towards future prospects which also ought to have been considered by the Tribunal. It was contended that the compensation awarded under the other heads is also on the lower side. Thus, counsel for the appellant prayed for suitable enhancement of the compensation.

4. Counsel appearing for the Insurance Company, however, opposes the appeal and submits that taking into consideration the date of accident and the date of award, the subsequent judgment of the Supreme Court in the case of Kishan Gopal may not be applicable in the instant case and the impugned award passed by the Tribunal is just and reasonable. Thus, prayed for rejection of appeal.

5. Having considered the rival contentions put forth on either side and on perusal of the record what reflects is that since the facts of the case so far as the accident, the age of the deceased, the liability of the Insurance Company are not in dispute, this Court is refraining itself from narrating the entire facts again. All that has to be seen is whether the income which has been taken into consideration for quantifying the compensation is reasonable or not.

6. According to the appellants, the deceased Purushottam had a provision shop with which he was earning around Rs.5,000-6,000 a month. However, on perusal of the record would clearly reflect that even if the contention of the appellants that the deceased was having a provision store is accepted, even then the said store still remains in the custody of the appellants who can run the shop and earn their livelihood. But definitely, the appellants would have to engage another person for running the business as it may not be feasible for the widow and the minor daughter to manage the shop. Thus, considering the fact that the accident arose in the year 2002, this Court is of the opinion that the Tribunal ought to have taken the notional income of Rs.3,000/- a month for the purpose of calculating compensation and it is ordered accordingly.

7. So far as the future prospects is concerned, it is by now well settled that even if the deceased was a person having self employment even then the future prospects would have to be calculated for quantifying the compensation. Considering the age of the deceased to be that of 25 years, the future prospects which has to be added would be 50% of his yearly income and the multiplier which would be applicable applying the principles as laid down by the Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121,** would be 18.

8. Accordingly, taking Rs.3,000/- as monthly income of the deceased, the yearly income would be Rs.36,000/-. If 50% of the said amount is added towards future prospects, the amount reaches to Rs.54,000/- of which if 1/4th is deducted towards personal expenses, the net amount would be Rs.40,500/-. If the said amount is multiplied by applying the multiplier of 18, the amount would be Rs.7,29,000/- which is the compensation towards loss of dependency. Further taking into account the number of dependants and also keeping in view the decision of the Supreme Court in the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54** this Court is of the opinion that ends of justice would meet if a lump sum compensation of Rs.1,00,000/- is added under the other heads. Accordingly, the appellants shall be entitled for a total compensation of Rs.8,29,000/- in stead of Rs.2,74,500/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

9. The appeal thus stands allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola