NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 276 of 2010

1. Smt. Mamta Choudhary, Wd/o Late Ganshyam Choudhary, aged about 30 years.

2. Minor Ku.Jyoti D/o Late Ganshyam Choudhary, Aged about 11 years.

3. Minor Ku.Priti D/o Late Ganshyam Choudhary, Aged about 9 years.

4. Minor Ku.Tripti D/o Late Ganshyam Choudhary, aged about 4 years.

5. Minor Roshan S/o Late Ganshyam Choudhary, Aged about 1 years.

   Appellants No.2 to 5 Minors through Natural Guardian Mother Smt. Mamta Choudhary Wd/o Late Ghanshyam Choudhary All resident of village Bijana P.S. Pussore, Tahsil and District Raighar (C.G.)

----Appellants

Versus

1. Nagendra Shah, S/o S. Shah, aged about 50 years, rsident of 26 Adeadar Street Calcutta- 700019 (Owner) Bengal

2. Arjun Rai S/o Late Jasalal Rai, aged about 28 years, resident of 01-B,blak Burn Lane,calcutta-12 West Bengal.

3. Branch Manager, National Insurance Co. Ltd.Saha Complex Near Priydarshini Nagar,bilaspur

---- Respondents

For Petitioners	:	None
For Respondent No.3	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board By

24/07/2017

1. None for the appellant. Considering the fact that the present is an appeal under the Motor Vehicle Act of the year 2010. Considering the fact that this is an old appeal, this Court proceeded further to decide the appeal on merits taking assistance from the counsel for the Insurance Company

i.e. respondent No.3.

2. This is claimants' appeal seeking for enhancement of the award dated 28.10.2009 passed in claim case No.24/2006 passed by the IV Motor Accident Claims Tribunal, FTC, Raigarh. The fact in nutshell is that the deceased Ghanshyam Choudhary met with an accidental death dated 24.03.2006 when he was hit by a truck bearing registration No.WB-03-A-9489, which was driven by respondent No.2 and owned by respondent No.1.

3. The claimants i.e. the widow and four minor children of the deceased filed claim case under Section 166 of the Act, 1988, the Tribunal considering the evidence and the pleadings, exonerated the insurance company of its liability to pay compensation for the reason that the insurance policy which was produced during the proceedings was found to be fake policy and therefore, fastened the liability of payment of compensation upon respondent No.1 and jointly and severally ordered to payment of compensation to the tune of Rs.3,64000/- with interest @ 7.5% per annum.

4. What is pertinent to take note is that the Tribunal has taken notional income of the deceased to be Rs.3000/- a month for calculating the compensation accordingly. The Tribunal further has deducted 1/3rd towards personal expenses and the multiplier applied was 13. The grievance of the claimants is that monthly income calculated and the deduction made towards the personal expenses is on the lower side and they deserve enhancement in view of the judgment of the Supreme Court rendered in **Sarla Verma (Smt) and Others Vs. Delhi Transport**

Corporation and another[1] . Respondents No.1 & 2 the owner and driver were ex-parte before the Tribunal and they have not cared to enter appearance before this Court also.

5. What is also relevant at this juncture is that so far as the calculation of the insurance company and fastening of liability upon the owner is not challenged by filing any separate appeal and thus the same has attained finality. The only issue involved left to determine is whether the quantification part by the Tribunal was proper, legal and justified or not. The claimants before the Tribunal has made a categorical statement that the deceased at the time of accident was running a dairy, wherein he used to sell milk in addition to his agricultural income. It was also submitted that the deceased had 9 acres of land and a large number of cattles for milking and it is not in dispute that after the death of the deceased there is no one to take care of the cattles.

6. These evidence and facts have not been controverted or reverted in any manner. The accident occurred in March, 2006 in any case even if the entire version of the claimants are not accepted as it is, it is a fact that the deceased was having 9 acres of land and some cattles therefore, his daily income would have definitely more than Rs.150/- a day which comes around Rs.4500/-. The Tribunal in applying the notional income of Rs.3000/- a month and the annual income Rs.36000/- therefore not proper and the same deserves to be modified and is accordingly ordered that the claimant shall be entitled for compensation by accepting the monthly wages of the deceased to be Rs.4500/-, which comes at Rs.54000/- in a year. Likewise the deduction made of 1/3rd is not proper

1 (2009) 6 SCC 121

in light of the judgment of **Sarla Verma (supra)**. Considering the fact that there are five dependents of the deceased, a widow and four minor children, the deduction towards personal expenses ought to have been 1/4th instead of 1/3rd, it is ordered accordingly. If 1/4th is deducted from Rs.54000/-, the figure reaches to 40500/-. So far as the applicability of the relevant multiplier is concerned, this issue also has been by now well settled by the Supreme Court right from the landmark judgment in the case of **Sarla Verma (supra)** wherein it is held that in the death of a deceased aged between 31 to 35 years, the multiplier would be 16 and therefore, the Tribunal ought to have been applied the same in the present case also. Instead of 13 if the said amount is multiplied by 16 the amount of compensation payable to the claimants would reach to 40500x16=Rs.6,48,000/- in place of 3,12,000/-as quantified by the Tribunal and it is ordered accordingly. So far as the compensation under the other heads are concerned it appears that the Tribunal has granted Rs.10000/- to the five claimants under the head of loss of consortium and love and affection and Rs.2000/- towards personal expenses totaling Rs.52000/- under other heads.

7. Considering the judgment of **Sarla Verma (supra)** as also the judgment passed by the Supreme Court in the case of **Rajesh and others Vs. Rajbir Singh & Others**[2], this Court is of the opinion that the compensation under the other heads also deserve to be enhanced and the same is accordingly enhanced to Rs.1Lakh as a consolidated amount to the claimants under the other heads. Thus, the claimants are entitled for a total compensation of Rs.7,48,000/- instead of 3,64,000/- as awarded by the Tribunal. Thus, the claimants shall be entitled to for an

2 (2013) 9 SCC 54

enhanced additional compensation of Rs.3,84,000/- in addition to what has already been quantified by the Tribunal and the enhanced amount shall also carry the same rate of interest as has been awarded by the Tribunal.

8. It is made clear that the liability of payment of compensation remains upon the respondents No.1 & 2 as has been decided by the Tribunal.

9. The appeal stands allowed and disposed of.

Sd/-

P. Sam Koshy

Judge

Ashu