NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.575 of 2010

1. Smt.Ailsi Denial W/o Late Denial John, aged about 26 years.
2. Arpit John S/o Late Denial John, aged about 01 years, minor through his legal guardian mother Ailsi Denial.
   Both are R/o C/o R.Wilson, TMA RSD Station, Railway Colony, Tehsil & District – Raipur (C.G.).

---Appellants

Versus

1. Arun Kumar Rai S/o Shri Mahadev Ram, aged about 37 years, R/o Kasaridih, Azad Chowk, Durg, City & District – Durg (C.G.).
2. Subhash Bansal S/o Shri H.K.Bansal, R/o Civic Centre, Bhilai, Durg, City & District – Durg (C.G.).
3. The National Insurance Company Limited, through its Divisional Manager, Mobin Mahal, G.E.Road, Raipur, Raipur (C.G.).
4. John S/o Late John Laxman, aged about 51 years, 90-D, Pragati Nagar, Charoda, Bhilai, District Durg (C.G.).
5. Smt.Victoria, aged about 47 years; 90-D, Pragati Nagar, Charoda, Bhilai, District – Durg (C.G.).
6. Samuel John S/o John, aged about 27 years.
7. Michale John S/o John, aged about 22 years.
8. Ku.Vailgani John S/o John, aged about 22 years.
   Respondent Nos.6 to 8 are R/o 90-D, Pragati Nagar, Charoda, Zone-1, Bhilai, District – Durg(C.G.).

---Respondents

For appellants	:	Shri Shekhar Sharma on behalf of Shri Raghvendra Pradhan, Advocate.
For respondent No.1 & 2	:	Ms.Kiran Singh, Advocate.
For respondent No.3/ Insurance Company	:	Shri B.N.Nande, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicle Act challenging the award dated 26/02/2010 passed by the learned 2nd Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No.33/2009. Vide the said impugned award the Tribunal in a Claim Case under Section 166 of the Motor Vehicle Act has awarded the compensation of Rs.4,45,000/- along with interest @ 6% per annum.

2. The counsel for the appellants submits that, the amount of compensation awarded and the calculation made are on the lower side and therefore the impugned award deserves suitable enhancement. He further submits that, the monthly income assessed by the Tribunal is also on the lower side considering the period of accident and the Tribunal also has not considered the income under future prospects while quantifying the compensation. Likewise, 1/3rd is deducted from the income towards future prospects while calculating the compensation whereas considering the total number of claimants, the deduction ought to have been 1/4th. He further submits that, the compensation under the other heads also has been awarded on the lower side as only Rs.13,000/- is awarded under the conventional head.

3. The counsel for the Insurance Company however opposing the appeal submits that, perusal of the record would show that the Tribunal has passed an award taking into consideration the entire evidence which have come on record and there is no substantive material for reconsideration of the same and the award being just and reasonable and therefore the appeal deserves to be rejected.

4. Having considered the rival contentions put forth on either side and on perusal of record this court is of the opinion that, the income assessed by the Tribunal is definitely on the lower side side as in the year 2008 i.e. the time of the accident, the minimum wages of even an unskilled labour itself would had been more than Rs.150/day that would mare it Rs.4,500/- monthly and for all practical purposes, the Tribunal should have accepted the monthly income of the deceased at Rs.4,500/- per month instead of Rs.3,000/-. It is ordered accordingly.

5. Likewise, the law so far as taking into account the future prospects while calculating the compensation is also well settled by a series of

decisions starting from the judgment of ***Sarla Verma & Ors. Vs.Delhi Transport Corporation & Anr. [2009 {6} SCC 121]***.

6. In the present case, since the total number of claimants are four, applying the principles of law laid down by the Hon'ble Supreme Court in the case of Sarla Verma (Supra), it would be the deduction of 1/4th towards personal expenses instead of 1/3rd. It is ordered accordingly.

7. So far as the compensation under the conventional head is concerned, considering the age of the deceased and also taking note of the decision of the Supreme Court in the case of ***Rajesh & Ors. Vs. Rajbir Singh & Ors. [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 granted under the conventional head instead of Rs.13,000/- as awarded by the Tribunal. It is ordered accordingly.

8. Accepting Rs.4,500/- as the monthly income of the deceased and adding 50% of the said amount i.e. Rs.2,250/- in it towards future prospects, the amount would become Rs.6,750/- which would make the yearly income at Rs.81,000/- of which if 1/4th is deducted towards personal expenses, the amount would be Rs.60,750/- which if multiplied by applying multiplier of 17, the amount would reach to Rs.10,32,750/-. It is ordered accordingly that the claimants shall be entitled for Rs.10,32,750/- towards loss of dependency instead of Rs.4,32,000/- as awarded by the Tribunal. In addition, the claimants shall also be entitled for a lump sum compensation of Rs.1,00,000/- under the conventional head instead of Rs.13,000/- as awarded by the Tribunal. Thus, the claimants shall be entitled for total compensation of Rs.11,32,750/- instead of Rs.4,45,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.

9. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit