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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1085 of 2014

1. Jinesh Kumar Jain S/o Dalchand Jain, aged about 54 years, R/o Flat No. A-1, V.V. Apartments, Opposite Ekta Hospital, Shanti Nagar, Raipur C.G.
2. Smt. Kiran Devi Jain W/o Jinesh Kumar Jain, aged about 50 years, R/o Flat No. A-1, V.V. Apartments, Opposite Ekta Hospital, Shanti Nagar, Raipur C.G.
3. Arpit Jain S/o Jinesh Kumar Jain, aged about 21 years, R/o Flat No. A-1, V.V. Apartments, Opposite Ekta Hospital, Shanti Nagar, Raipur C.G.

---- Appellants

Versus

1. Mangauram S/o Murharam Nag R/o village Sidavan, Thana- Keshkal, Distt. Bastar C.G. (Driver of truck No. CG 17-H 1811)
2. Diwan Singh S/o Sardar Singh R/o Gangamunda Ward, Gandhi Nagar, Jagdalpur, Distt. Bastar C.G. (Owner of truck No. CG 17-H 1811)
3. Reliance General Insurance Company Limited through Branch Manager, Branch Office, Plot No. 29, Nehru Nagar, Commercial Complex, Bhilai, Distt. Durg C.G. (Insurer of truck No. CG 17-H 1811)
4. Smt. Pramila Bai Kothari W/o Late Dilip Kumar Kothari, aged about 50 years, R/o Gandhi Chowk, Mahasamund, Distt. Mahasamund, C.G.
5. United India Insurance Co. Ltd. through Branch Manager, Branch Office, Tara Complex, G.E. Road, Power House, Bhilai, Distt. Durg C.G. (Insurer of Tavera Car No. CG 07 M 9019) **---- Respondents**

For Appellant	:	Shri Samir Singh, Advocate
For Respondent no.3	:	Shri Rohitashav Singh, Advocate
For Respondent no.5	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

04/12/2017

Present is a Claimants' appeal under Section 173 of the Motor Vehicles Act assailing the award dated 16.07.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Balod, District Balod (CG) in Claim Case No. 84 of 2014. Vide the impugned award the Tribunal in a death case of Ashutosh Jain under Section 166 of the MV Act has awarded a compensation of Rs.5,20,000/- with interest @ 6% per annum from the date of application.

2. Contention of the counsel for the applicant is that the deceased Ashutosh Jain in the instant case was a software engineer working at Pune in a Software Company and was drawing much more than what has been assessed by the Tribunal while quantifying the compensation. According to the counsel for the appellants, the Tribunal should have taken into consideration the income Tax return which was filed before it for assessing the yearly income of the deceased. He submits that the claimants in the instant case would also be entitled for 50% of the income to be calculated towards future prospects. Further the multiplier has also been wrongly taken by the Tribunal while computing the compensation. Thus, prayed for the amount of compensation to be suitably enhanced.

3. Counsel for the Insurance Company, however, opposing the appeal submits that it is a case where the deceased was a bachelor and that the employment and the income of the deceased have not been properly proved and established before the Tribunal, in the absence of which, the income assessed by the Tribunal is to be considered as just and reasonable. Thus, prayed for rejection of the appeal.

4. Having considered the contentions put forth on either side and on perusal of the recored it clearly reflects that Exhibit P-13 is the income tax return which was furnished before the Tribunal on behalf of the claimants. The income for the assessment year 2008-09 was assessed at Rs.1,79,003/- which in the subsequent year must have increased. Given the factual matrix of the case, this Court does not find of there being any strong material to disbelieve Exhibit P-13, the income tax return coupled with the fact that Exhibit P-14 i.e. the salary certificate of the deceased which shows the monthly income of the deceased at Rs.23,409/-. Thus, this Court for the purpose of quantifying the compensation, assesses the yearly income of the deceased at Rs.1,50,000/- in stead of Rs.60,000/- as assessed by the Tribunal and computes the compensation accordingly.

5. Taking the income of the deceased at Rs.1,50,000/-, if 50% of the same is deducted towards personal expenses, the amount comes to Rs.75,000/-. Further taking into consideration the age and the nature of employment of the deceased and also keeping in view 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 50% of the income towards future prospects which would make the yearly income of the deceased at Rs.1,50,000/-. If the said amount is multiplied applying the multiplier of 18, the amount comes to Rs.27,00,000/- as compensation towards loss of dependency. In addition, the claimants would also be entitled for Rs.40,000/- under conventional heads. Thus, the claimants shall be entitled for a total compensation of Rs.27,40,000/- in stead of Rs.5,20,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal. The liability part for payment of compensation shall also remain the same as has been arrived at by the Tribunal.

6. The appeal thus stands allowed.

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

Bhola