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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1213 of 2014

1. Smt. Neelam Sahu W/o Late Chhannulal @ Chhannuram Sahu Aged About 40 Years R/o Village- Pasoud, P.O. Pendra, P.S. Fingeshwar, Distt. Gariyaband C.G.
2. Om Prakash @ Krishna Sahu S/o Late Chhannulal @ Chhannuram Sahu Aged About 19 Years R/o Village- Pasoud, P.O. Pendra, P.S. Fingeshwar, Distt. Gariyaband C.G.
3. Hulash Chand Sahu S/o Late Chhannulal @ Chhannuram Sahu Aged About 17 Years Minor, Thru- Mother Smt. Neelam Sahu, R/o Village- Pasoud, P.O. Pendra, P.S. Fingeshwar, Distt. Gariyaband C.G.
4. Ku. Thaneshwari Sahu D/o Late Chhannulal @ Chhannuram Sahu Aged About 16 Years Minor, Thru- Mother Smt. Neelam Sahu, R/o Village- Pasoud, P.O. Pendra, P.S. Fingeshwar, Distt. Gariyaband C.G.
5. Smt. Sonbati Sahu W/o Dwarika Prasad Sahu Aged About 60 Years R/o Village- Pasoud, P.O. Pendra, P.S. Fingeshwar, Distt. Gariyaband C.G.
6. Dwarika Prasad Sahu S/o Late Rameshar Sahu Aged About 70 Years R/o Village- Pasoud, P.O. Pendra, P.S. Fingeshwar, Distt. Gariyaband C.G.

---- Applicants

Versus

1. Resham Singh S/o Maghar Singh Sardar Aged About 55 Years R/o Semartara, P.O. Kirwai, P.S. Rajim, Distt. Gariyaband C.G. [under The Employer Of Narayan Sahu, S/o Suraj Sahu, Age- 50 Yrs, R/o Semartara, P.O. Kirwai, P.S. Rajim, Distt. Gariyaband C.G.]
2. Narayan Sahu S/o Suraj Sahu Aged About 50 Years R/o Semartara, Post Office- Kirwai, P.S. Rajim, Distt. Gariyaband C.G.
3. The Iffco Tokio General Insu.Co.Ltd. Thru- Branch Manager, Branch Office, Lal Ganga Shopping Mall, G.E. Road, Raipur, P.O. Raipur, P.S. Golbazar, Tah. And Distt. Raipur C.G.

---- Respondents

For Applicants : Mr. Shivendu Pandya, Advocate
For Respondent No.3/Insurance Company: Mr. Amrito Das, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

18/07/2017

Heard.

1. This appeal has been brought challenging the quantum of the compensation given in award dated 04.03.2014, by Additional Motor Accidents Claims Tribunal, Gariyaband, District-Gariyaband in Claim Case No.47/2013.
2. Appellants are dependents of the deceased Chhannulal @ Chhannuram Sahu aged about 44 years. He died in motor accident on 24.5.2013. The vehicle involved in the accident was tractor/harvester bearing registration No.C.G./04/D.T./5167 which was rashly and negligently driven by Respondent No.1.
3. Respondent No.1 was driver, respondent No.2 was registered owner of the vehicle and the insurer was respondent No.3.
4. Alleging that death of deceased has resulted due to rash and negligent driving of respondent No.1, claim case was filed against respondents, claiming that the deceased had earned Rs.15,000/- per month and appellants/claimants have suffered loss of income and loss in various other heads. Claim was contested by all the respondents.
5. After framing of issues and affording opportunity to adduce evidence to both the parties, award was passed, in which it has been held that death of deceased -Chhannulal @ Chhannuram Sahu resulted due to

rash and negligent driving of the respondent No.1. The liability for paying compensation was saddled on the respondents jointly and severally and after assessment of the damages, a compensation of Rs.4,68,000/- was ordered to be paid by the learned tribunal below.

6. Grounds in this appeal are these that learned tribunal below has not followed the principles laid down in case of ***Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation and Another***, reported in ***(2009) 6 Supreme Court Cases 121*** in the matter of deduction from the income of the deceased and in the matter of applying the correct multiplier. The assessment of compensation by the learned tribunal below is contrary to the principles of assessment. The income of the deceased as pleaded and proved has been erroneously rejected and reduced by the Court below. The deduction from the income towards personal expenses of the deceased has also been made on higher side. No consideration was given to assessment the future prospects whereas in this respect a 50% increase in the income should have been included for the payment of compensation in the head of future prospects. Similarly, the assessment has been made on the lower side for loss of estate, loss of consortium and loss of love and affection. Hence, prayed that the compensation may be suitably enhanced.
7. It is submitted by the counsel for appellants that according to pleadings the income of deceased was Rs.15,000/- per month whereas the tribunal below has while assessing the income reduced it to 3,000/- per month without assigning any reason. Further, it is submitted that no consideration was given for addition of

compensation for future prospects and the compensation awarded under the heads of loss of consortium is also in the lower side which requires to be enhanced suitably.

8. Respondents No.1 and 2 are not represented in this appeal.
9. Learned counsel for respondent No.3 has opposed the grounds raised in appeal and the arguments submitted in this behalf. It is submitted that the compensation assessed, determined and awarded by the trial Court is just and proper which needs no interference in this appeal.
10. There is no dispute regarding the finding that the death of deceased Chhannulal Sahu occurred in the accident occurred due to rash and negligent driving of the respondent No.1. The age of deceased was between 44 and 45 years and that the appellants/claimants are his dependents and the respondents are jointly and severally liable for payment of compensation.
11. The only question for determination in this appeal is whether the compensation awarded to the appellants has been incorrectly assessed, determined and need enhancement.
12. Income of the deceased was though pleaded to be Rs.15,000/- per month, but no evidence was brought to prove the same. AW-1 has though stated in her examination in chief that income of deceased was Rs.15,000/- per month but admitted in the cross examination that she had been unable to produce any documents to prove the income. She further admitted that her husband was an agricultural labour and at the relevant point of time the income of a labour was Rs.100 per day. No other evidence has been brought by the applicant, hence, in

absence of required proof, the monthly income of the deceased as assessed by the Tribunal i.e. Rs.3000/-, cannot be held to be erroneous.

13. There is no question raised in this appeal regarding the selection of multiplier. It is also submitted that learned tribunal below has not given any consideration or made assessment with respect to the future prospect, which was directed in case of Sarla Verma (supra), and has also been reiterated in case of ***Rajesh & Others Vs. Rajbir Singh & Others***, reported in ***(2013) 9 Supreme Court Cases 54***, which has been followed in case of ***Munna Lal Jain and another Vs. Vipin Kumar Sharma & Ors.***, reported in ***(2015) 6 Supreme Court Cases 347***. In the later judgments, principle for making assessment for future prospects has been further defined on the basis of the age of the deceased, according to which, if, the age of the deceased was below 30 years and deceased was self employed or a person with fixed wages, in that case, the addition for future prospects will be 50%. For the persons, of age above 40 years, such addition would be 30%. Hence, the claim of compensation is required to be enhanced accordingly. In this case, the increase of 30% shall be applied as the age of deceased above 50 years and below 40 years. The loss of income of the appellants assessed by the tribunal below was Rs.3,78,000/- by adding in it, 30% for loss of future prospects in total, Rs.4,91,400/- is the amount appellants are entitled to receive under the head of loss of income. Further, the loss of consortium has been awarded Rs.25,000/- and for loss of love and affection the compensation awarded is Rs.35,000/- which is on the lower side and

not according to increase that as per the ratio of law laid down in case of Rajesh & Others Vs. Rajbir Singh (supra). Hence, compensation under the joint heads of loss of consortium, loss of love and affection is enhanced to Rs.1 lac. Compensation in other heads like Rs.25,000/- for cremation and 15,000/- for loss of estate needs no interference. After the assessment made as aforesaid the total amount Rs.6,31,000/- is the compensation which the appellants are entitled to receive as the enhancement compensation in this appeal.

14. Thus, the appeal is allowed. Appellants/claimants shall be paid a total compensation of Rs.6,31,000/- by the respondents jointly and severally within a period of 30 days from the date of this judgment. On failure of respondents in payment of compensation awarded, interest @ 9% shall be chargeable from the date of this judgment till its realization. Compensation awarded by the tribunal below if paid, shall be adjustable in payment of compensation awarded by this Court.
15. In the result, the appeal is allowed in part and the impugned judgment is modified to the extent indicated above. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
Judge