NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 448 of 2010

1. Smt.Chandra Devi W/o Late Shri Pashupati Pillai, aged about 44 years.
2. Smt.Geeta D/o Late Shri Pashupati Pillai, aged about 26 years.
   Both are R/o Village – J.M.Q. Colony, Vishrampur, P.S. & P.O. - Vishrampur, Tahsil – Surajpur, District – Surguja (Chhattisgarh).

---- Appellants

Versus

1. Smt.Suhilya Devi W/o Shivpujan, aged about 55 years, caste – Koiri, R/o Village Shiv Nandanpur, P.S. & P.O. - Vishrampur, Tahsil – Surajpur, District – Surguja (Chhattisgarh).
2. Shri Umensai @ Khoru S/o Shri Til Vikam Singh, aged about 22 years, R/o Village – Harra Tikara, P.S. - Jainagar, Tahsil – Surajpur, District – Surguja (Chhattisgarh).
3. The Oriental Insurance Company Limited, through – The Branch Manager, the Oriental Insurance Company.

---Respondents

For Appellants	:	Shri Majoj Mishra, Advocate
For respondent No.1	:	Shri Surfaraj Khan, Advocate
For respondent No.3/Insurance Company	:	Shri Deepak Gupta, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/09/2017

1. Present is an appeal preferred by the claimants seeking enhancement of the compensation. The challenge in the present appeal is to the award dated 18/01/2010 passed by the 1st Upper Motor Accident Claims Tribunal, Surajpur, District Surguja (C.G) (for short – the Tribunal) in Claim Case No.99/2006.

2. The facts of the case is that, the deceased Pashupati Nath Pillai, aged around 48 years, employee of the South Eastern Coal Field Limited, posted at Vishrampur, Tah.Surajpur, District Surguja (C.G) met with an accident on 09/06/2005 at about 9.30 p.m. while he was travelling on his own Motorcycle bearing registration No. CG-15-1729 was hit by a jeep bearing registration No. CG-15-ZA/1233 belonging to the respondent No.1, driven by the respondent No.2 and insured by the respondent No.3.

3. The widow and the daughter of the deceased filed a Claim Case under Section 166 of the Motor Vehicle Act (for short – MV Act) seeking for compensation. After the pleadings were complete and the evidences were record, the Tribunal reached to the conclusion that, since the driver of the offending vehicle i.e. a jeep who was charged for the criminal offence under Section 302 and 201 of 34 I.P.C in Sessions Trial No. 135/2006 got an order of acquittal from the court of 1st Additional Sessions Judge, Surajpur, District Surguja (C.G) vide judgment dated 25/07/2006, the respondents cannot be charged for having committed any negligence in

the course of driving the jeep and therefore the Claim Case under Section 166 may not be maintainable. The Tribunal taking aid of the order of acquittal of the driver reached to the conclusion that since the acquittal of the driver of the offending vehicle would lead to a presumption of there being no negligence on the part of the driver, suo motu converted the claim case under Section 166 of the MV Act to one under Section 163A of the MV Act. Treating it as a claim case under Section 163A, the Tribunal took the maximum permissible wage limit of Rs.40,000/- while quantifying the compensation and reached to the conclusion that the claimants shall be entitled for compensation of Rs.5,00,000/- in addition to a lump sum compensation of Rs.20,000/- under the other heads and also awarded penal interest of 12% if the awarded amount is not deposited within 30 days. It is this award which is under challenge. .

4. According to the claimants, the finding of the Tribunal that the case of the claimants would fall under Section 163-A is an erroneous finding, since admittedly, the deceased died because of his Motorcycle being hit by another Motorcycle belonging to the respondents. Further, a criminal case was also lodged against the driver of the offending jeep before the competent court of law.

5. In this case, only because there is a judgment of acquittal in favour of the driver of the vehicle by itself would not be a case for converting the Claim Case under Section 166 of the MV Act to one under Section 163-A. Further, from the record what also reflects is that, the Tribunal in its finding has categorically held of there being no dispute so far as the deceased having died because of accident from the jeep belonging to the respondents. If that be so, it stands conclusively proved, as it has also not been challenged by any of the respondents that the accident not having occurred because of the involvement of two vehicles.

6. Further, the Tribunal has also fastened the liability of payment of compensation upon the Insurance Company which had insured the jeep which again has not been challenged by either the owner of the vehicle or the Insurance Company and hence so far as liability part is concerned, same also has attained finality.

7. This court thus holds that, the finding of the Tribunal to the extent of converting the Claim Case from Section 166 of MV Act to one under Section 163-A to be erroneous or bad in law. The safest inference which can be drawn is that, the Claim Case maintainable under Section 166 of the MV Act.

8. Further, the evidences which have come on record show that the deceased at the relevant point of time was working as an employee in South Eastern Coal Field Limited in Vishrampur area. His salary slip for the period of May-2004 to September-2004 was brought on record. The

date of accident is June-2005. In September-2004 also, the gross salary of the deceased was Rs.19,586/-. The wage of the deceased himself must have been definitely increased in another six months time. There was no other payslip produced by the claimants for quantifying the compensation, hence this court accepts the salary of the deceased as per the pay slip of September-2004 assessing it at Rs.19,586/- which would make annual income to be Rs.2,35,032/- of which 30% would have to be added towards future prospects then the amount would become Rs.70,510/- which when added to the yearly income would make annual income to be Rs.3,05,542/-. If 1/3rd of this is deducted towards personal expenses the amount would come to be Rs.2,03,695/- which if multiplied by applying multiplier of 13, the amount would becomes 26,48,035/-. The compensation under the conventional head would remain the same at Rs.1,00,000/- as has been awarded by the Tribunal. Thus, total compensation which would be payable to the claimants shall be Rs.27,48,035/-. It is further held that the claimant shall also be entitled for interest on the said amount at the rate of 6% per annum from the date of award passed by the Tribunal i.e. from 18/01/2010.

9. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit