

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 953 of 2014

1. Smt. Gauri Sonkar Wd/o Late Radhe Sonkar Aged About 30 Years,
 2. Ku. Nandani Sonkar D/o Late Radhe Sonkar Aged About 12 Years,
 3. Ku. Jiteshwari @ Pooja D/o Late Radhe Sonkar Aged About 10 Years,
 4. Ku. Hameshwari @ Sudha D/o Late Radhe Sonkar Aged About 9 Years,
 5. Ku. Kamleshwari D/o Late Radhe Sonkar Aged About 7 Years,
 6. Ku. Anjali D/o Late Radhe Sonkar Aged About 6 Years,
 7. Dev Sonkar S/o Late Radhe Sonkar Aged About 4 Years,
- No.2 & 7 are Minor, Through- guardian Mother Smt. Gauri Sonkar,
- All R/o Near Atal Chauk, Tah. And Thana- Dhamtari, Distt. Dhamtari C.G.

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Versus

1. Shatruhan @ Madan Sahu S/o Late Rameshwar Rao Aged About 44 Years R/o Demar, Tah. And Distt. Dhamtari C.G.
2. Naresh Kumar Lahre S/o Ghashiram Lahre R/o Jodhapur Ward, College Road, Dhamtari, Distt. Dhamtari C.G.
3. Shriram General Insurance Co.Ltd. E-8, Rikko Industrial Area, Sitapura, Jaipur (Rajasthan)

Respondents

For appellants - Shri Samir Singh, Advocate.
For respondent No.3 - Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

18/07/2017

1. The instant appeal is against the award dated 2nd July, 2014 passed by the Additional Motor Accident Claims Tribunal, Dhamtari in claim case No.01/2014. Claim case was filed by Gauri Sonkar and six minor children being dependant of the deceased Radhe Sonkar.
2. As per the case of the claimants, deceased Radhe Sonkar was

working as a helper in truck which was owned by non-applicant No.2 Naresh Kumar Lahre which was insured with non-applicant No.-3 Sriram General Insurance Company Limited on 12/03/2013. Truck was coming to Dhamtari with the goods at Keskal Ghati the truck bearing No. CG 04/G/ 2481 which was driven by non-applicant No.1 Satrugan turned the vehicle in rash and negligent manner whereby Radhe Sonkar who was sitting in the cabin fell out of truck and sustained injuries. He was declared dead when brought to the hospital. It was stated that Radheshyam Sonkar was 34 years of age. He was helper and mechanic of the truck and used to earn Rs.7000/- per month apart from daily allowance of Rs.100/- whereby he used to earn Rs.10,000/- per month. Consequently, an amount of Rs.64 lakhs was claimed. During adjudication of the claim petition, it was held that at the relevant time driver of the truck i.e. non-applicant No.1 bearing No. C.G. 04/G/2481 had driven the vehicle rashly and negligently and the vehicle was owned by non-applicant No.2 whereby the deceased thrown away from the truck and died. These findings are not under challenge. The tribunal also came to conclusion that at the relevant time there was no breach of condition of the terms of insurance. Consequently, the insurance company was made liable to pay the compensation. Instant appeal is for enhancement of the award which was of Rs.4,48,000/-.

3. Learned counsel for the appellants would submit that the learned tribunal has failed to assess the income and also future prospect. It is also submitted that amount for loss of love and affection to six children and the wife and loss of consortium also not been properly given, therefore suitable enhancement be made.

4. Learned counsel for respondent No.3 would submit that before

the trial court the insurance company remained ex-parte and to set aside the same different proceeding have been drawn and the amount awarded is well merited which do not call for any interference.

5. Perused the documents and order of the trial court.

6. Wife Smt. Gauri Sonkar examined as AW-1 with respect to the income has stated that his husband used to work in the truck wherein he was getting Rs.7000/- per month apart from daily allowance of Rs.100/-, thereby he used to earn Rs.10,000/- per month. It is further stated that her husband was planning to purchase a pickup van wherein income would have further increased. One AW-2 Sube Singh has also corroborated the fact that he was working alongwith deceased Radhe Sonkar and deceased was being paid Rs.7000/- per month as remuneration apart from Rs.100/- daily allowance, thereby Rs.10,000/- was being paid. AW-3 owner of the vehicle stated that vehicle was insured with Sriram Insurance non-applicant No.3 and further stated that deceased was working under him and also used to work as mechanic in the vehicle, therefore he was being paid Rs.150/- per day apart from that Rs.100/- daily allowance was being paid when the vehicle used to go out.

7. Learned tribunal has assessed the income to Rs.3000/- per month. It appears that no future prospect has been added. Considering the statement of the witnesses in the opinion of this court taking into drastic fall in value of rupees and inflation and the increase in price index. Taking into fact Rs.4500/- per month income that of the deceased appears to be just and proper. Further taking into law laid down in case of **Rajesh & others Vs. Rajbir Singh & others** reported in **(2013) 9 SCC 54** since deceased was below age of 40 years as such

50% of the future income requires to be added. Claim is being preferred by 7 persons who claim to be dependants, therefore deduction of 1/5th would be proper as per case of **Sarla Verma Vs. DTC (2009) 6 SCC 121**. Award would show that tribunal has used multiplier of 14 but as per case of **Sarla Verma** taking into age of the deceased as 40 years as has been shown in post mortem report Ex.P-5 multiplier of 15 would be applicable. Award shows that Rs.5000/- have been awarded to the wife for loss of consortium and Rs.5000/- each to the children for loss of love and affection and loss of estate Rs.5000/- has been awarded apart from funeral expenses of Rs.5000/-. In the opinion of this court, this also requires to be enhanced taking into age of the minor and statement of the wife. Therefore, total compensation is re-assessed as follows:-

S.No.	Heads	Calculation
(i)	Notional income @ Rs.4500/- per month	Rs.54,000/- per annum.
(ii)	50% of (i) above to be added as future prospect	Rs.54000/+ 27000 = Rs.81,000/-
(iii)	After deducting 1/5th of (ii) above towards personal expenses annual dependency comes to	Rs.81000–Rs.16200= Rs.64,800/-
(iv)	After applying multiplier of 15 dependency comes to	Rs.64,800/- x15 = Rs.9,72,000/-
(v)	For loss of consortium to the wife and loss of estate	Rs.1,00,000/-
(vi)	For loss of love and affection to six minor children @ Rs.50,000/- each	Rs.3,00,000/-
(vii)	For funeral expenses	Rs.25,000/-
	Total	Rs.13,97,000/-

8. Thus, total compensation will be Rs.13,97,000/-. After deducting Rs.4,48,000/- awarded by the tribunal, the enhancement would be Rs.9,49,000/-. The said amount shall carry interest @ 6% per annum

from the date of filing of the claim petition till date of realization.

9. In the result, appeal is partly allowed. Claimants would be entitled to receive Rs.9,49,000/- in addition to what is already awarded.

10. So far as it relates to apportionment, each of the minor children son and daughter shall also get Rs.1 lakh each and remaining amount shall be distributed to the wife. Registry is further directed to communicate the quantum of enhancement to the claimants in Hindi Deonagari language which may be communicated through gram panchayat of the concerned village wherein appellants are presently residing. The legal aid committee of the area shall also ensure the payment of compensation to the appellants.

Sd/-

(Goutam Bhaduri)

JUDGE

