NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 64 of 2008

1. Kunti Bai, W/o. Late Shish Paal Singh Ramteke, Aged 50 years,
2. Vijay Kant, S/o. Late Shish Paal Singh Ramteke, Aged 38 years,
3. Deo Kant, S/o. Late Shish Paal Singh Ramteke, Aged 32 years,
4. Kunj Bihari, S/o. Late Shish Paal Singh Ramteke, Aged 28 years,

All R/o. Village Aarod, Tahsil Charama, District North, Bastar, Kanker, Chhattisgarh

---- Appellants

Versus

1. Raju Das Banjare, S/o. Ramayan Das, Aged about 31 years, R/o. Village Maaraa, P.S. Nandghat, District Durg, Chhattisgarh
2. M/s. Rajnandgaon Road, Lines, Head Office Raipur, Chhattisgarh, Through: Smt. Gurusharan Singh, W/o. Preetam Singh Garcha, R/o. Civil Lines, Raipur, "Near Gandhi Udyaan" Chhattisgarh.
3. The New India Insurance Company Limited, Divisional Office, First Floor, Madeena Building, Jail Road, Raipur, Chhattisgarh
4. Aghan Bai, W/o. Late Shish Paal Singh Ramteke, (since keep) aged about 54 years,
5. Yakesh Kumar, S/o. Late Shish Paal Singh Ramteke, Aged about 38 years,

Respondents No. 4 & 5 are R/o. Village Aaroud, Tahsil Charama, District Kanker, Chhattisgarh

----Respondents

For Appellants	:	Mr. R. N. Jha, Advocate
For Insurance Company	:	Mr. Dashrath Gupta, Advocate
For Respondents No. 4 & 5	:	Mr. Sushobhit Koshta, Advocate on behalf of Mr. Vishnu Koshta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/10/2017

1. Present is an appeal under Section 173 of the Motor Vehicles Act filed by the Claimants in Motor Accident Claims Case No. 206/2006, dated 26.11.2007, decided by the Additional Motor Accident Claims Tribunal, Kanker, Chhattisgarh.

2. The brief fact of the case is that the deceased Shish Paal Singh Ramteke and Headmaster, Government Middle School, Haaradula met with an accident on 05.05.2006. Two sets of Claimants, each claiming to be wife and children of the deceased filed two separate claim applications under Section 166 of the Motor Vehicles Act before the Additional Motor Accident Claims Tribunal, Kanker, both of which were registered separately as Motor Accident Claim Case No. 145/2006 and Motor Accident Claim Case No. 206/2006.

3. The Tribunal after clubbing the two claim cases together finally vide the impugned award dated 26.11.2007 awarded an amount of Rs.3,25,300/- which were equally distributed between the two sets of Claimants, each getting a share of Rs.1,62,650/- with interest @9% per annum from the date of application.

4. The present appeal has been preferred by one set of Claimants seeking for enhancement of the compensation as also questioning the compensation and questioning the awarding of compensation to another set of Claimants, who were also claiming to be the wife and children of the deceased.

5. According to the present appellants, it is only the present appellants, who are the wife and children of the deceased Shish Paal Singh Ramteke and that they were the legally wedded wife and children borne from their legal marriage and that granting of award to the other Claimants was unjustified. It was also argued by the present appellants that the amount of compensation awarded is on the lower side and the same deserves suitable enhancement.

6. Contention of the counsel for the appellants seeking for enhancement was on the ground that the Tribunal has wrongly made

the calculation and that applying the principles and guidelines laid down by the Hon'ble Supreme Court in the case of ***"Sarla Verma and others vs. Delhi Transport Corporation and another" [2009 (6) SCC 121],*** the Claimants shall be entitled for much more compensation than what has been awarded in the present case. It was further contended that the Tribunal has also erroneously deducted the pension amount from the monthly income of the deceased for the purpose of quantification of compensation, which again is not proper, legal and justified and the compensation thus was sought to be modified suitably.

7. Per contra, the counsel appearing for the Insurance Company opposing the appeal submitted that the award passed by the Tribunal is based upon the evidence which have come on record and that there is no illegality or perversity, which has been committed by the Tribunal and the award is based upon the principles of law as is stood at the time of passing of the award and thus prayed that there was no scope of interference of the impugned award and also prayed for rejection of the appeal.

8. Having heard the rival contentions put forth on either side and on perusal of record, so far as the first ground of challenge as regards the apportionment of the compensation between the two sets of Claimants are concerned, this Court is of the opinion that no strong material has been brought in by the appellants to establish the fact that she is the first wife and children borne from the first marriage and that the findings of the Tribunal is based upon the evidence, which has been brought on record by either of the Claimants.

9. Further, from the evidence which has been brought on record undisputedly both the sets of Claimants were living with the deceased or had the relationship with the deceased that of wife and children. Under the circumstances, this Court is of the opinion that the findings of the apportionment of the compensation between two sets of Claimants by the Tribunal is fair, reasonable and justified and the same does not warrant any interference. The appeal to that extent stands negated.

10. So far as the enhancement of the compensation is concerned, if we look into the compensation which has been awarded by the Tribunal in paragraph No.30 what is reflected is the fact that the Tribunal considering the age of the deceased to be 60 years and 8 months have granted the compensation towards loss of dependency, equivalent to the salary of balance of service i.e. for 16 months and the compensation awarded was calculated accordingly.

11. The Tribunal has also taken into account the fact that the Claimants would be getting pension almost 50% of the salary and the said amount was also appropriately deducted from the monthly income of the deceased assessed while quantifying the compensation.

12. In the opinion of this Court, deduction from the monthly income of the deceased for the purpose of computing the compensation is bad in law. The issue stands decided in the decision of the Hon'ble Supreme Court in the case of ***"Helen C. Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation & Anr." reported in (1999) 1 SCC, 90***, wherein the Hon'ble Supreme Court has held that "***Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a***

"pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction........"

13. In the light of the aforesaid decision of the Hon'ble Supreme Court, the calculation of the compensation made by the Tribunal seems to be erroneous and the same is not sustainable and deserves to be and is accordingly set-aside and this Court proceeds to compute the compensation afresh. Accepting the net income of the deceased to be Rs.12,464/-, the yearly income of the deceased would be Rs.1,49,568/-, of which considering the number of Claimants if ¼ is deducted towards personal expenses, the amount would come to Rs.1,12,176/- and if the said amount is multiplied by applying multiplier of 7 in view of the decision of the Sarla Verma (supra), the amount would come to Rs.7,85,232/-.

14. It is ordered accordingly that the Claimants shall be entitled for compensation of Rs.7,85,232/- towards loss of dependency. Considering the decision of the Hon'ble Supreme Court in the case of ***"Rajesh and others vs. Rajbir Singh and others" (2013(9) SCC 54)***, and considering the period of accident, this Court quantifies the compensation under the conventional head at Rs.1,00,000/-. Thus, the total amount payable to the Claimants shall be at Rs.8,85,323/- instead of Rs.3,25,300/-. The said amount shall be equally distributed between two sets of Claimants of equal share of Rs.4,42,616/- each instead of Rs.1,62,615/-.

15. The said enhanced amount shall also carry interest at the same rate as has been quantified by the Tribunal in its impugned award.

16. The liability of payment of compensation shall remain upon the Insurance Company. Rest of the conditions put by the Tribunal shall remain intact. The appeal thus stands allowed.

Sd/-

(P. Sam Koshy)
Judge

Ved