NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 163 of 2009

1. Smt. Anjani Bai Wd/o. Late Rikhiram Dewangan, aged about 51 years,
2. Mohan Dewangan, S/o. Late Rikhiram Dewangan, aged about 32 years,
3. Purshottam S/o. Late Rikhiram, aged about 29 years,
4. Sukhnandan, S/o. Late Rikhiram Dewangan, aged about 27 years,

All R/o. Subhashnagar, Dhamtari, District Dhamtari, Chhattisgarh.

---- Appellants

Versus

1. Sundar Lal Netam, S/o. Ramdayal Netam, R/o. Village Rudri Maradev, P.S. Dhamtari, District Dhamtari, Chhattisgarh
2. Bhawani Shankar Soni S/o Mohan Lal Soni R/o Amapara Ward, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh
3. The Oriental Insurance Co. Ltd. Branch Office, Dhamtari, District Dhamtari, Chhattisgarh
4. Narad Ram S/o Late Rikhiram aged about 30 years, R/o Subhashnagar, Dhamtari, District Dhamtari Chhattisgarh

–---Respondents

For Appellants	:	Mr. Ashish Gupta, Advocate
For Respondent No.2	:	Mr. R.K. Pali, Advocate on behalf of Mr. P.P. Sahu, Advocate
For Respondent No.3	:	Mr. Abhishek Sinha, Advocate along with Mr. Ghanshyam Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/09/2017

1. Heard on I.A. No.1, which is an application for withdrawal of Vakalatnama. Considering the reasons, assigned in the application, the same is allowed.

2. The present is an appeal under Section 173 of the Motor Vehicles Act by the claimants. The challenge is to the award dated 06.10.2008, passed by the Motor Accident Claims Tribunal, Dhamtari, in Claim Case No. 03/2008. Vide the said impugned award, the Tribunal has granted a compensation of Rs.2,77,400/-, but has deducted 25% of the same on the ground that there being a

contributory negligence also on the part of the deceased, thus the total compensation payable to the claimants became Rs.2,08,050/-,

3. It is this award which has been challenged by the claimants. The contentions of the claimants is that the findings of the Tribunal, so far as the contributory negligence is concerned, the prima-facie without any evidence and same deserves to be quashed. It was also the contentions of the counsel for the appellants that the quantum of compensation awarded is also unreasonably low as compared to the earnings of the appellants.

4. According to the counsel for the appellants, the deceased in the instant case namely Rikhiram Dewangan was working as a Tailor and that he was earning substantial income as is evident from the income tax return, which was furnished by the claimants before the Tribunal for the year 2005-06 and in the said return the annual income of the deceased was shown at Rs.99,763/-, but the Tribunal without any basis has disbelieved the same and has taken Rs.30,000/- as the income of the deceased for calculating the compensation.

5. The counsel for the appellants submits that since the deceased was a Tailor, he would have definitely been earning more than Rs.200-300/- a day, which would make the monthly income of the deceased to be between Rs.6,000-9,000/-. He submits that if the amount of Rs.3,000/- is divided between number of days of the month, the same would be less than Rs.100/- a day i.e. too meager an amount considering the profession of the deceased that of Tailor. He further submits that so far as the finding of contributory negligence is concerned also was without any basis as there is no evidence brought by the respondents by which it could be said that there was an element of negligence on the part of the deceased, which caused the accident. The finding arrived at is on assumption and presumption and the same is not sustainable, thus prayed for amount awarded being suitably modified.

6. Mr. Ghanshyam Patel appearing for the Insurance Company however opposes the appeal and submits that the findings arrived at

by the Tribunal is based on the evidence, which has come on record and the Tribunal has duly considered the same and as such there is no scope of interference with the impugned awarded.

7. Having heard the counsel for the either side and on perusal of the records, so far as the arguments of finding of contributory negligence being bad is concerned, when we look into the evidence what reflects is that the said finding arrived at by the Tribunal was only for the reason that there was no eyewitness examined to prove the negligence of the offending vehicle, which dashed the deceased and for the reason that the spot map prepared was not clear as to who was negligent the finding of the contributory negligence was given. This in the opinion of the Court is highly improper and is not sustainable for the simple reason that the Tribunal itself has given a finding that spot map has not been prepared properly and rather has been prepared negligently. That only because there is no eyewitness who could be examined by the claimants itself can not be a ground for applying the principles of "***res ipsa locutor***", in the present case to attract contributory negligence against the deceased. The findings so arrived, thus deserves to be and is accordingly set-aside.

8. Considering the fact that the deceased was a Tailor and the accident was of October, 2007, this Court has no hesitation in reaching to the conclusion that the appellant would have been earning somewhere between Rs.200-250/- a day from the said tailoring work and for the purpose of assessing the income, this Court finds that Rs.30,000/- as has been assessed by the Tribunal is unreasonably low and this Court is of the view that the appellant would have been earning somewhere around Rs.80,000-90,000/- yearly and for the purpose of calculation of compensation this Court takes the annual income of the deceased at Rs.80,000/-. If 1/3 of Rs.80,000/- is deducted towards the personal expenses, the amount would reach to Rs.53,334/- which if multiplied by applying multiplier of 9 as has been laid down by the Hon'ble Supreme Court in case of ***"Sarla Verma & Ors vs Delhi Transport Corp. & Anr" (2009) 6 SCC 121)***, the amount would be Rs.4,80,006/- which is rounded of Rs.4,80,000/-.

9. Further the findings of the Tribunal so far as the medical expenses are concerned, the same is ordered to remain intact at Rs.70,400/-. In addition, the amount of compensation under conventional head, which has been assessed by the Tribunal at Rs.27,000/- also seems to be on lower side and considering the case of the Hon'ble Supreme Court in the case of ***"Rajesh and others vs. Rajbir Singh and others" (2013(9) SCC 54)***, this Court quantifies the said amount at Rs.1,25,000/-. Thus, the total amount of compensation payable to the appellants shall be Rs.6,75,400/- without there being any deduction towards contributory negligence instead of Rs.2,08,050/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. The appeal thus allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

Ved