

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1682 of 2016

1. Bhushan Lal Soni S/o Ghanshyam Prasad, Aged About 57 Years
2. Ravishankar Soni S/o Bhushan Lal, Aged About 30 Years
3. Satyanarayan Soni S/o Bhushan, Aged About 25 Years
4. Shivnarayan Soni S/o Bhushan Lal, Aged About 23 Years

All R/o Village Old College Road, Near Mahadev Ghat, Champa,
P.S. & Tahsil - Champa, District Janjgir-Champa, Chhattisgarh

---- Appellants

Versus

1. Naresh Kumar S/o Foolchand, Aged About 31 Years Present Address Sharda Chowk, Janjgir P.S. Janjgir, District Janjgir-Champa, Chhattisgarh
2. Neelkamal Rai S/o N.C.Rai, Aged About 31 Years Caste- Rai, Link Road, New Janjgir, District Janjgir-Champa, Chhattisgarh
3. Branch Manager, National Insurance Co. Ltd., Branch Office 13 Meenu Complex, Main Road, Kosabadi Korba, District Korba, Chhattisgarh.
4. Malti Soni W/o Rajesh Soni, Aged About 35 Years D/o Bhushan Lal Soni, Present Address Hosiyari, Tahsil & District Bilaspur, Chhattisgarh
5. Mamta Soni W/o Suresh Soni, Aged About 32 Years D/o Bhushan Lal Soni, Present Address Champa, Tahsil- Champa, District Janjgir-Champa, Chhattisgarh

---Respondents

For Appellants	:	Mr. H.P. Agrawal, Advocate
For Respondent No.2	:	Mr. Ashutosh Trivedi, Advocate
For Respondent No.3	:	Mr. G.V.K. Rao, Advocate
For Respondents No. 4 & 5	:	Mr. C.K. Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/09/2017

1. The present is an appeal by the claimants seeking enhancement of the award dated 17.03.2016, passed by the 1st Additional Motor Accident Claims Tribunal, Janjgir-Champa, Chhattisgarh, in Motor Accident Claim Case No. 41/2015. Vide the impugned award, the Tribunal has granted a compensation of Rs.1,00,000/- to the appellants with interest @ 9% per annum.

2. The counsel for the appellants submits that the amount of compensation awarded is on lower side, as the notional income taken by the Tribunal is on the lower side so also the amount of compensation paid under the conventional head is also unreasonably low and deserves suitable enhancement.
3. According to the counsel for the appellants, the notional income of the deceased at the time of accident should have been accepted of at least Rs.4,500/- a month for the reason that the accident is of the year 2011 and even an unskilled labour during those period would be earning more than Rs.150/- a day and prayed for the compensation to be calculated on the basis of the higher monthly income.
4. It was further contended by the counsel for the appellants that the compensation under the conventional head also is extremely on lower side not considering the period of accident as also the status of the claimants and prayed for suitable enhancement.
5. The counsel for the Insurance Company however opposing the appeal submits that it is a case where the findings of the Tribunal was based on the evidence which have come on record and that there is no evidence to show the actual source of income of the deceased neither is there any proof to show the income of the deceased and therefore findings of the Tribunal does not warrant interference and prayed for rejection of the appeal.
6. Having heard the contentions put forth on either side and on perusal of the record, what is undisputed is the facts pertaining to the date of accident, the vehicle involved in the accident, and the offending vehicle being duly insured with the respondent No.3. Further the age of the deceased of 56 years is also not in dispute. Now what we have to see is whether the notional income accepted by the Tribunal is proper or not. The accident in the instant case is of year 2011. It is anybody's guess that minimum income of an unskilled labour at the relevant time would have been more than Rs.150-200/- a day which makes the amount around Rs.4500-6000/- a month.

7. Even if we treat the deceased to be a house wife, even then based on the judgment by the Hon'ble Supreme Court in the case of **"Jitendra Khimshankar Trivedi and others vs Kasam Daud Kumbhar and others"** [2015(4) SCC 237], the notional income of the deceased ought to have been around Rs.4,500/- a month. As in the said case the Hon'ble Supreme Court for the accident that took place in the year 1990 had taken the notional income of the deceased a house wife at Rs.3,000/-.
8. Thus this Court has no hesitation in holding the income of the deceased for the purpose of calculating compensation to be at Rs.4,500/- a month, which would make yearly income to be Rs.54,000/- of which if 1/3 is deducted, the net income would be Rs.36,000/-, which if multiplied by applying multiplier of 9 as per the judgment of Hon'ble Supreme Court in case of **"Sarla Verma & Ors vs Delhi Transport Corp. & Anr"** (2009) 6 SCC 121, the amount of compensation payable would be Rs.3,24,000/- instead of Rs.67,500/- as assessed by the Tribunal.
9. So far as the compensation under the conventional head is concerned, the amount of compensation of Rs.32,500/- awarded is on the lower side and same deserves enhancement. Considering the decision of the Hon'ble Supreme Court in the recent passed, this Court is of the opinion that in the given facts and circumstances, this Court is inclined to grant a lump sum compensation of Rs.1,26,000/- under the conventional head. Thus making the total compensation payable to the claimants at Rs.4,50,000/- instead of Rs.1,00,000/- as awarded by the Tribunal.
10. The amount of compensation shall be distributed amongst the claimants in the same proportion as has been awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.
11. The appeal thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge