**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**MISC. APPEAL (C) NO. 417 OF 2014**

1. Ajay Tiwari S/o Late Balkrishna Tiwari Aged About 51 Years R/o Pt. Din Dayal Upadhyay Nagar, Sec.-2, H.No. 34, P.S. D.D. Nagar, Raipur, Distt. Raipur.
2. Smt. Abhilasha Tiwari W/o Ajay Tiwari Aged About 48 Years R/o Pt. Din Dayal Upadhyay Nagar, Sec.-2, H.No. 34, P.S. D.D. Nagar, Raipur, Distt. Raipur.

**… Appellants**

**Versus**

1. Nitesh Rana S/o Raghunath Rana R/o (1) C/o Shri Naresh Kumar Mandhani, S/o B.R. Mandhani, H.No. 28, Rajiv Nagar, Raipur, (2) Village-Tellara, P.S. Mamod, Distt. Baitul (M.P.)
2. Naresh Kumar Mandhani S/o B.R. Mandhani R/o H.No. 28, Rajiv Nagar, Raipur.
3. The Oriental Insurance Co. Ltd. Through Divisional Manager, Kachery Chowk, Jail Road, Raipur, Distt. Raipur.

**… Respondents**

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| For Appellants | : | Mr. Amiyakant Tiwari, Advocate. |
| For Respondent No.3 | : | Mr. Sandeep Shrivastava, Advocate. |

**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**25/07/2017**

**1.** The present is an appeal under Section 173 of the Motor Vehicles Act preferred by the Claimants seeking enhancement of compensation of Rs.3,09,000/- as awarded by the Chief Motor Accident Claims Tribunal, Raipur, on 8.1.2014, in Claim Case No. 230 of 2011.

**2.** Factual aspects of the case are not in dispute so far as the accident that took place on 17.7.2011, the deceased Abhishek Tiwari aged about 22 years having died in the said accident, the claimants being the parents of the deceased, the offending vehicle i.e. Truck bearing Registration No. CG04-J/6433 belonging to Respondent No.2, driven by Respondent No.1 and insured with Respondent No.3 at the relevant point of time, are concerned.

**3.** The contention of the Claimants before the Tribunal was that the deceased at the relevant point of time was working as a computer operator. The Tribunal vide the impugned award has granted a compensation of Rs. 3,09,000/- with interest thereon at the rate of 6% from the date of filing of the claim application. It is this award which is under challenge in the present appeal.

**4.** According to the learned Counsel for the Claimants, the impugned award so far as the quantum of compensation under the head of loss of income is concerned is on the lower side as the wages of the deceased which has been taken into consideration by the Tribunal is only Rs.3000/- per month, whereas the deceased at the relevant point of time was working as a computer operator and was earning more than Rs.5000/- a month. It was further contended that the Tribunal has also erred in not granting the compensation under the head of future prospects. Similarly, the amount of compensation under the other heads also is on the lower side and therefore the impugned award deserves to be modified and the amount of compensation is liable to be enhanced.

**5.** Learned Counsel for the Insurance Company however opposes the appeal and submits that taking into consideration the fact that the deceased was aged about 22 years on the date of accident and the claimants being the parents of the deceased, it would reflect that the claimants were not dependant upon the deceased. Further, as the impugned award of the Tribunal seems to be fair and reasonable so far the quantum of compensation is concerned and the same does not warrant any interference and the appeal is therefore liable to be rejected.

**6.** Having considered the rival contentions put forth on either side and on perusal of the record, undisputedly the date of accident is 17.7.2011. In 2011, even an unskilled labour was getting the wages of somewhere around Rs.150-200/- a day, which would make the annual income around Rs.4500-6000/- a month. For all practical purpose, wages of at least

Rs.150/- per day that would make it Rs.4500/-per month, should have been taken by the Tribunal to calculate the compensation. The award therefore deserves to be and the same accordingly is ordered to be enhanced to the extent of Rs.4500/- per month and which comes to Rs.54,000/- per annum to be considered as the wages of the deceased for the purpose of quantifying the compensation.

**7.** In addition, taking into consideration the fact that at the time of accident the deceased was around 22 years of age, in times to come there would had been definitely an increase in the income of the deceased. Under normal circumstances, it would be proper if the calculation of compensation is made taking into consideration at least 50% towards rise in his future income to be added for the purpose of calculating the quantum of compensation in view of the law laid down by the Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and Another** [2009 (6) SCC 121] and **Rajesh and Others Vs. Rajbir Singh and Others** [2013 (9) SCC 54]. Accordingly, it is ordered that for the purpose of quantifying the comensation, 50% should had been taken as future prospects.

**8.** Likewise, so far as the amount under the head of love and affection is concerned the amount of Rs.25000/- awarded under this head to each of the claimants is also on the lower side. It is anybody's guess that for the parents who have lost their 22 years old son it would have been a great blow particularly when he was the only son of theirs. Therefore, the amount under the head of love and affection deserves to be enhanced and it is ordered that each of the claimants shall be entitled for a compensation of Rs.50,000/- each under this head.

**9.** Accordingly, after adding 50% of Rs.54,000/-, the actual income of the deceased comes to Rs.81,000/- per annum. If 50% of the said amount is deducted towards the personal expenses of the deceased, the amount would be Rs.40,500/- which after applying the multiplier of 18 would come to Rs.7,29,000/-. This would be the compensation which the claimants would be entitled for under the heads of loss of income and dependency. The impugned award stands modified accordingly and it is held that the claimants would be entitled for a compensation of Rs. 7,29,000/- towards loss of dependency, instead of Rs. 2,34,000/- as awarded by the Tribunal. Likewise, it is also ordered that the amount of compensation under the head of love and affection is enhanced to Rs.1,00,000/- instead of Rs.50,000/- as awarded by the Tribunal. However, the amount of compensation towards funeral expenses remains the same at Rs.25,000/- as has been awarded by the Tribunal.

**10.** Thus, the total compensation payable to the claimants would be Rs.8,54,000/- against the total award of Rs.3,09,000/- as has been awarded by the Tribunal and the claimants are entitled for a difference amount of Rs.5,45,000/- as compensation.

**11.** As a consequence, the appeal is allowed and the impugned award is modified and enhanced to the extent that the Appellants-Claimants shall be entitled for an enhanced amount of compensation of Rs.5,45,000/- in addition to the compensation of Rs.3,09,000/- already awarded by the Claims Tribunal. The Respondents shall pay the said enhanced amount to the Appellants-Claimants within a period of two months from the date of receipt of certified copy of this order, along with the interest thereon at the same rate as has been awarded by the Tribunal. All the other directions and conditions, as awarded by the Claims Tribunal, shall remain intact.

Sd/-
**(P. Sam Koshy)**
**Judge**

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