NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 597 of 2017

1. Radha Bai Wd/o Late Amar @ Anuj Sao, Aged About 24 Years
2. Bhart Kumar S/o Late Amar @ Anuj Sao, Aged About 3 Years
3. Prem Kumar S/o Late Amar @ Anuj Sao, Aged About 1 Years

Appellants No.2&3 are Minor Through Legal Guardian Mother Radha Bai, All are R/o New Krishna Nager Supela Bhilai Distt. Durg, Chhattisgarh.

---- Appellants

Versus

1. Rajesh Kumar S/o Pullu Ram Bind, Aged About 30 Years (Driver Of The Offending Vehicle Truck No. C.G.04/8377) R/o Village Karanpur Thana Dehat Kotwali Distt. Mirjapur (U.P.) Hall Mukam Quarter No.62 G.Camp 01 Bhilai Distt. Durg, Chhattisgarh ....(Driver)
2. Ghanshyam Kumar Nirala S/o Mahgiram, Aged About 38 Years (Owner Of The Offending Vehicle Truck No. C.G.04/8377) R/o M.I.G. 2/2244 M.P.Housing Bord Bhilai Distt. Durg, Chhattisgarh ....(Owner)
3. I.C.I.C.I. Lombard General Insurance Company Limited, Branch Office Lal Ganga Complex Shop No. 303-30 G.E.Road Raipur, Chhattisgarh ....(Insurer)
4. Dharmendra Umar S/o Ramkhilawan, Aged About 21 Years R/o New Krishna Nagar Supela Bhilai Distt. Durg, Chhattisgarh
5. The United India Insurance Company Limited, Bilaspur, Chhattisgarh.

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For respondents 2&4	:	Shri Ravindra Sharma, Advocate.
For respondent No.3	:	Shri Sudhir Agrawal, Advocate.
For respondent No.5	:	Shri P.Dutta, on behalf of Shri Sudhir Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

16/08/2017

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation against the award dated 17.09.2013 passed by the Addl. Motor Accident Claims Tribunal, Mungeli (in short, the Tribunal) in Claim Case No.10/2011. Vide the said award, the Tribunal in a death case has allowed the claim application of the claimants under Section 166 of the Motor Vehicles Act and awarded compensation of Rs.4,18,000/- along with interest @ 6 percent per

annum from the date of application.

2. The challenge is to the quantum of compensation awarded. According to appellants, the Tribunal has taken the notional income of the deceased on the lower side and have also not granted any compensation under the head of future prospects. Likewise, the amount of compensation awarded under the other heads also is on the lower side and thus, prayed for enhancement of the compensation suitably.
3. Counsel for the appellants submits that the deceased in the instant case Amar @ Anuj was a vegetable vendor and that while he was going to wholesale market at Bilaspur, he met with an accidental death. The deceased at the relevant point of time was a vegetable vendor at Bhilai and was earning almost about 150-200 a day which makes the monthly income of the deceased around Rs.4500-6000/-. Thus, the notional income which has been accepted by the Tribunal at Rs.3000/- per month was not justified. He further submits that the Tribunal has also not taken into account the income under future prospects for quantifying the compensation.
4. Counsel for the respondent-insurance company however opposes the appeal on the ground that the award passed by the Tribunal is just and reasonable and the same does not warrant any interference inasmuch as the Tribunal has taken into account the overall factual matrix of the case, the age of the deceased and the nature of work being performed by the deceased.
5. Having heard the rival contentions put forth on either side and on perusal of records what is undisputed is the date of accident, the resultant death of deceased Amar @ Anuj and the age of the deceased

being 25 years as per postmortem report. It is also not in dispute that the deceased was a vegetable vendor. The award has not been questioned by any of the respondents before the Tribunal and as such the same has attained finality. So far as liability of payment of compensation is concerned, the Tribunal has fastened the same upon the insurance company who had insured the offending vehicle i.e. Truck bearing registration No.CG-04-8377 which was insured by the respondent No.3-ICICI Lombard General Insurance Co.Ltd.

6. Having considered the submissions put forth on either side what is also reflected is that, a vegetable vendor at Supela, Bhilai, would have definitely at the time of accident i.e. in the year, 2010, earning minimum of more than Rs.150/- a day which would have definitely fetched the deceased more than Rs.4500/- per month. Thus, in the opinion of this court, the Tribunal ought to have taken the notional income income of the deceased at Rs.4500/- for awarding compensation. Likewise, the Tribunal has also erred inasmuch as in not taking into account the income from future prospects while quantifying the compensation.

7. Therefore, considering the age of the deceased at the relevant point of time and the guidelines laid down by the Supreme Court in case of Sarla Verma and Others Vs. Delhi Transport Corporation & Anr. 2009 (6)SCC 121 as also subsequent decisions of the Supreme Court, the future income to be considered for quantifying the compensation would be 50 percent which in the instant case would be Rs.2250/-.

8. If the same is added to the monthly income of the deceased i.e. Rs.4500/- it makes it Rs.6750/- and if multiplied by 12 it becomes Rs.81000/- which would be the annual income of the deceased. Of

which, if 1/3rd is deducted towards personal expenses, the net yearly income would be Rs.54000/-. If the same is multiplied with multiplier of 18 instead of 17 as has been applied by the Tribunal, the amount of compensation payable towards loss of dependency would be Rs.9,72,000/-instead of Rs.4,08,000/-as awarded by the Tribunal.

9. So far as compensation under the other heads are concerned, taking into account the decision of Supreme Court in the recent past, this court is of the opinion that the amount of Rs.10,000/- awarded by the Tribunal under the other heads in a death case is definitely on the lower side and the same also deserves to be and is accordingly enhanced by a lump sum compensation of Rs.1,00,000/-. Thus, the total compensation payable to the claimants would be Rs.10,72,000/- instead of Rs.4,18,000/- as awarded by the Tribunal.

10. The appellants-claimants accordingly shall now be entitled for an enhanced compensation of Rs.6,54,000/-in addition to what has already been awarded by the Tribunal. The said amount shall carry interest at the same rate as awarded by the Tribunal. Rest of the conditions mentioned in the award shall remain intact. The liability of payment of compensation would also be upon the same insurance company as has been fastened by the Tribunal.

11. With the aforesaid, the appeal stands allowed to the above extent.

Sd/-
(P. Sam Koshy)
Judge

inder