NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1238 of 2009

1. Sunita Patel, Wd/o. Heera Lal, aged about 26 years,
2. Kumari Anchal, D/o. Heera Lal, aged about 4 ½ years,
3. Rajkamal S/o. Late Heera Lal, Aged about 2 years,
4. Sohel Kumar, S/o. Late Heera Lal, Aged about 5 months,

   Respondent No. 2 to 4 are minors and presented this appeal through his legal guardian mother Sunita Patel, Wd/o. Heera Lal.
5. Suraj Bai, Wd/o. Kaleshwar, Patel, Aged about 50 years,

   All are R/o. Village Temar, Tahsil Sakti, District Janjgir-Champa Chhattisgarh

---- Appellants

Versus

1. Firat Ram Kewat, S/o. Battu Lal Kewat, Aged about 35 years, R/o. Village Pisaud, Tahsil Janjgir, District Janjgir-Champa Chhattisgarh
2. Shambhu Paliwal, S/o. Fakir Chand Paliwal, Aged about unknown, R/o. Gandhi Chowk Naila, District Janjgir-Champa Chhattisgarh
3. The Oriental Insurance Company Limited, through: Branch Manager, City Branch, T.P. Nagar, Korba, District Korba Chhattisgarh

----Respondents

For Appellants	:	Mr. Pushpendra Kumar Patel, Advocate
For Insurance Company	:	Mr. Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/11/2017

1. Present is an appeal by the Claimant seeking for enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa, Chhattisgarh dated 27.06.2009, passed in Claim Case No. 63/2008.

2. Vide the impugned award the Tribunal in a death has awarded a compensation of Rs.4,50,000/- with interest @ 6% per annum from the date of application. In addition, the Tribunal has also awarded

penal interest @9% if the amount is not deposited within two months.

3. The Insurance Company i.e. the respondent No.3 has also filed a Cross Objection opposing the award.

4. So far as the appeal of the Claimants is concerned, the contention of the counsel for the appellants is that though the income of the Claimants is assessed at Rs.3,000/-, but the Tribunal has not considered granting of future prospects while computing the compensation. Likewise, the deduction which has been made is by 1/3rd, whereas the total number of Claimants being 5, the deduction should had been 1/4th and thus prayed for the amount of compensation to be suitably enhanced. The counsel for the appellants further submitted that it is a case where the Claimants have raised a bill in respect of medical treatment which the deceased undertook at Apollo Hospital, Bilaspur and the bills value at Rs.1,94,410/-, which has not been granted by the Tribunal treating the claim application and the bills raised to be one under Section 163A of the Motor Vehicles Act. The appellants submit that it is an erroneous finding of the Tribunal as the claim application was under Section 166 and therefore, there was no limit so far as the medical expenses is concerned and the Claimants is thus entitled for the entire amount of the expenditure incurred in the treatment of the deceased.

5. The counsel for the Insurance Company however opposing the appeal submits that there is an element of contributory negligence on the part of the deceased for the accident to occur, which the Tribunal has not appreciated and the amount of compensation

payable has to be suitably apportioned after affixing contributory negligence upon the deceased. He further submits that the assessment of the compensation otherwise made seems to be just and reasonable. He also submits that the Insurance Company has also filed a Cross Objection in this regard, which may be considered.

6. Having considered the rival contentions put forth on either side and on perusal of record, so far as the ground of contributory negligence put forth by the counsel for the Insurance Company is concerned, the evidence which have come on record show that the accident took place at a turning and it was the truck, which was standing ahead on the turn and the time of accident was around 8:45 PM and the area was pitch dark and therefore the ground of contributory negligence, which is trying to be raised by the Insurance Company is not acceptable. So far as the judgment, which has been cited by the Insurance Company in this regard, i.e. ***"Renuka Devi H. vs. Bangalore Metropolitan Transport Corporation" (2008) 17 SCC 56***. The facts of the said case was entirely distinguishable for the reason that the accident in the said case was not on a turning, rather it is a case where the Truck had suddenly taken a turn on the left side of the road without any indication. Thus, the said judgment is quite distinguishable on the facts itself and cannot come to the rescue of the Insurance Company. However, there seems to be sufficient force on the arguments put forth by the counsel for the Insurance Company as regards the penal interest which has been imposed by the Tribunal.

7. Considering the fact that the Tribunal has already imposed interest on the amount awarded, this Court is of the opinion that imposing of

penal interest is totally uncalled for and the same is set-aside. The Cross Objection to that extent is allowed.

8. As regards the enhancement of the compensation, this Court does not find any scope of interference on the income of the deceased assessed by the Tribunal, which is Rs.3,000/- a month and Rs.36,000/- in year. However, in the light of the Hon'ble Supreme Court in the case of ***"Sarla Verma & Ors vs Delhi Transport Corp. & Anr." (2009) 6 SCC 121)***, the Claimants would be entitled for future prospects @ 40% of his yearly income, which comes to Rs.14,400/-, which added together with his yearly income would come to Rs.50,400/-.

9. Similarly, the deduction to be made from the personal expenses considering the number of Claimants would be 1/4th instead of 1/3rd as assessed by the Tribunal. Thus deducting 1/4th from Rs.50,400/- the amount would come to Rs.37,800/-, which if multiplied by 17, the amount would come to Rs.6,42,600/-. Thus, the Claimants shall be entitled for Rs.6,42,600/- towards loss of dependency instead of Rs.4,50,000/- as quantified by the Tribunal.

10. Further, since admittedly the claim application was under Section 166 and the liability has been fastened upon the Insurance Company, the Claimants would definitely be entitled for the entire medical expenses incurred and it could not have been restricted at Rs.15,000/- treating the application to be one under Section 163A. The said observation by the Tribunal thus is totally erroneous and is set-aside and it is ordered that the Claimants shall be entitled for the entire medical expenses incurred, the bills of which comes to around Rs.1,94,410/- as per Exhibit A-17 to A-60 produced before the

Tribunal. In addition, so far as the compensation under the conventional head is concerned, this Court considering the total number of Claimants holds that the Claimants shall be entitled for lump sum compensation Rs.70,000/- under this head. Thus, making the total compensation at Rs.9,07,010/-. It is ordered that the Claimants shall be entitled for total compensation of Rs.9,07,010/- instead of Rs.4,50,000/- as awarded by the Tribunal.

11. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

12. Thus, the appeal of the Claimants stands allowed and the Cross Objection of the Insurance Company is partly allowed to the extent of the order of penal interest being set-aside.

Sd/-
(P. Sam Koshy)
Judge

Ved