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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1084 of 2014

1. Smt. Sarla Jain W/o Rakesh Kumar Jain, aged about 45 years, R/o Ram Mandir Road, Katangi, Distt. Balaghat, M.P.
2. Harshil Jain S/o Late Rakesh Kumar Jain, aged about 24 years, R/o Ram Mandir Road, Katangi, Distt. Balaghat, M.P.
3. Mayur Jain S/o Late Rakesh Kumar Jain, aged about 20 years, R/o Ram Mandir Road, Katangi, Distt. Balaghat, M.P.
4. Nayna Jain D/o Late Rakesh Kumar Jain, aged about 22 years, R/o Ram Mandir Road, Katangi, Distt. Balaghat, M.P.
5. Dalchand Jain S/o Late Fakirchand, aged about 80 years, R/o Ram Mandir Road, Katangi, Distt. Balaghat, M.P.
6. Smt. Kamla Bai Jain W/o Dalchand Jain, aged about 75 years, R/o Ram Mandir Road, Katangi, Distt. Balaghat, M.P. **---- Appellants**

Versus

1. Mangauram S/o Murharam Nag R/o village Sidavan, Thana- Keshkal, Distt. Bastar C.G. (Driver of truck No. CG 17-H 1811)
2. Diwan Singh S/o Sardar Singh R/o Gangamunda Ward, Gandhi Nagar, Jagdalpur, Distt. Bastar C.G. (Owner of truck No. CG 17-H 1811)
3. Reliance General Insurance Company Limited through Branch Manager, Branch Office, Plot No. 29, Nehru Nagar, Commercial Complex, Bhilai, Distt. Durg C.G. (Insurer of truck No. CG 17-H 1811)
4. Smt. Pramila Bai Kothari W/o Late Dilip Kumar Kothari, aged about 50 years, R/o Gandhi Chowk, Mahasamund, Distt. Mahasamund, C.G.
5. United India Insurance Co. Ltd. through Branch Manager, Branch Office, Tara Complex, G.E. Road, Power House, Bhilai, Distt. Durg C.G. (Insurer of Tavera Car No. CG 07 M 9091) **---- Respondents**

For Appellant	:	Shri Samir Singh, Advocate
For Respondent no.3	:	Shri Rohitashav Singh, Advocate
For Respondent no.5	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

04/12/2017

Present is a Claimants' appeal under Section 173 of the Motor Vehicles Act assailing the award dated 16.07.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Balod, District Balod (CG) in Claim Case No. 85 of 2014. Vide the impugned award the Tribunal in a death case of Rakesh Jain under Section 166 of the MV Act has awarded a compensation of Rs.3,99,000/- with interest @ 6% per annum from the date of application.

2. Counsel for the appellants submits that the compensation awarded in the instant is on the lower side. He submits that the deceased in the instant case was running an electrical shop which after his death could not be continued and there is a substantial loss which the Tribunal should have taken into account while calculating the compensation. He further submits that the Tribunal should have considered the income tax return of the deceased furnished by the claimants and the future prospects while quantifying the compensation so also the deductions of personal expenses should have been 1/4th in stead of 1/3rd as assessed by the Tribunal. Thus, prayed for the amount of compensation to be suitably enhanced.

3. Counsel for the Insurance Company, however, opposing the appeal submits that except for the income tax return, there is no strong evidence led by the claimants to prove the income of the deceased. Further, the shop which was being run by the deceased was still there which could be operated even by the other legal representatives of the deceased and therefore, there would not be much loss of earning capacity so far as the deceased is concerned. Thus, prayed for the rejection of the appeal.

4. Having considered the contentions put forth on either side and on perusal of the record what clearly reflects is the admitted factual matrix of the

case; the accident that occurred on 23.10.2009, the resultant death of Rakesh Jain aged around 51 years, the deceased being the owner of an electrical shop, the involvement of the offending vehicle in the said accident which was duly insured by respondent no.3 Reliance General Insurance Co. Ltd. and the liability fastened by the Tribunal vide the impugned award on respondent no.3 Insurance Company have not been questioned or challenged by the said Insurance Company. Thus, so far as the liability part is concerned, the same has attained finality.

5. The issue now left to be considered is whether the income of the deceased assessed by the Tribunal at Rs.36,000/- yearly is just and reasonable considering his nature of business and the income tax return?

6. A perusal of the record it reflects that the date of accident is October, 2009 and that the deceased in the instant case was a shop owner who was operating the shop. If the deceased had engaged somebody else to operate the shop on his behalf at the time of accident, he would definitely have to pay him somewhere around Rs.6,000 to 7,500 a month. This was the saving so far as the deceased is concerned. Thus, this Court has no hesitation in assessing the income of the deceased at Rs.6,000/- a month and Rs.72,000/- yearly in stead of Rs.36,000/- yearly as assessed by the Tribunal. Considering the age of the deceased and applying the recent larger Bench decision of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** decided on 31st October, 2017, the claimants would be entitled for 15% of the income towards future prospects which would bring the yearly income at Rs.82,800/-. From the said amount if 1/4th is deducted towards personal expenses considering the total number of claimants to be 6, the amount would come to Rs.62,100/-. If the said amount is multiplied applying the multiplier of 11 as per the guidelines laid down by the Supreme Court in the case of **Sarla Verma (Smt) and others Vs. Delhi**

Transport Corporation and another reported in **(2009) 6 SCC 121** in stead of 16 as assessed by the Tribunal, the amount would come to Rs.6,83,100/- as compensation towards loss of dependency. In addition, the claimants would also be entitled for Rs.70,000/- under conventional heads. Thus, the claimants shall be entitled for a total compensation of Rs.7,53,100/- in stead of Rs.3,99,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal. The liability part for payment of compensation shall remain the same as has been decided by the Tribunal.

7. The appeal thus stands allowed.

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

Bhola