

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 991 of 2012

1. Smt. Phoolmati, Wd/o. Late Sonuram Goyal, Aged About 30 Years.
2. Smt. Raini, Wd/o. Late Lakhmu, Aged About 62 Years.

Both are R/o. Village & Post Aasna, Tamakoni Para, P.S. Kotwali Jagdalpur, District Bastar (C.G.) Pin 494221

---- Appellants

Versus

1. Balwant Gonnade, S/o. Kishan Gonnade, Aged About 41 Years, R/o. Hotkachora Behind Gramin Bank, Abdul Kalam Ward, Post Jagdalpur, P.S. Kotwali, District Bastar (C.G.) Pin 494001
2. The Oriental Insurance Co. Ltd., Through Branch Manager, Branch Office Hotel Laxman Avenue Medical College Road, Post Jagdalpur, P.S. Kotwali, District Bastar (C.G.) Pin 494001

---- Respondents

For Appellants	:	Mr. P.K.Tulsyan, Advocate.
For Respondent No.2	:	Mr. Deepak Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21.07.2017

1. The appeal is against the award dated 29.06.2012 passed by the First Additional Motor Accident Claims Tribunal, Bastar, in Claim Case No.107/2011, whereby as against the claim made for Rs.6,25,000/-, an award of Rs.3,34,000/- was granted to the wife & mother for death of one Sonuram Goyal.
2. Briefly stated facts of the case is that on 18.03.2010, the deceased Sonuram alongwith another person Anil Kumar was coming back to his village Aasna, near a place Baidarguda Canal, a Tractor bearing No.C.G.17 G 2579 alongwith Trolley No.C.G.17 G 2580 being

driven in rash and negligent manner dashed the deceased whereby he died on the spot. It was stated by the appellants, wife & mother, that Sonuram was a Mason and he used to earn Rs.4,500/- per month and claimants were completely dependent on the deceased; thereby, an amount of Rs.6,25,000/- was claimed.

3. The learned Claims Tribunal while evaluating the evidence came to a conclusion that due to rash and negligent driving of the vehicle, the accident took place. With respect to holding liability over the insurance company, this was also held that the vehicle was not being driven against the terms and policy of the insurance company; thereby, the appeal is confined to the quantum of the award.
4. Learned counsel for the appellants would submit that the Tribunal has grossly erred in holding the age of the deceased to 50 years ignoring the Dakhilkharij Register marked as Ex.P-10(c) and was proved and tallied with the original by the Headmistress of the School wherein the deceased had studied. According to that, the date of birth of the deceased was 03.05.1973 and on the date of incident in the year 2010, the age would have been in between 36-37 years. He further submits that on the other heads also, meager amount has been awarded; therefore, suitable enhancement may be made.
5. Per contra, learned counsel appearing on behalf of the Insurance Company supported the award and would submit that the award is well merited, which do not call for any interference.
6. I have heard the learned counsel appearing for the parties at length, perused the documents and the evidence on record.

7. Primarily with respect to proof of age, it would show that the claimants who appears to be from the village background have adduced evidence of the wife Smt. Phoolmati wherein she has been stated to be aged about 32 years and Smt. Sita Uikey, Headmistress of the School wherein the deceased studied. According to the wife, her age is shown to 32 years in the statement and it is stated that the husband deceased was 5 years elder. It is further stated that husband used to earn Rs.4,500/- per month. In the cross examination, the Court also recorded the age probably to be 32 years and she has denied the suggestion that the age of her husband is 50 years at the time of accident. One witness Padam Goyal, AW-2, apart from the happening of the incident, he stated that the income of the deceased was Rs.4,500/- per month. The statement of Sita Uikey, AW-3, who stated to be Headmistress of the Primary School Tamakoni stated that as per the Dakhil-kharij Register, the date of birth of Sonuram, S/o. Lakhmu Ram is recorded as 03.05.1973 for which she had issued Ex.P-9, the Register of 1978 at serial No.36. It is stated that the certificate was issued on the basis of the Register and the copy of the Register was marked as Ex.P-10(c) and the original was marked as Ex.P-10. According to such Register, the date of birth of the deceased was shown to be 03.05.1973. In the cross examination, the statement has not been shaken, she maintained the fact that the date of birth of Sonuram, S/o. Lakhmu has been written as 03.05.1973.
8. As against this, the post mortem report shows that the age of the deceased was 50 years. As against Ex.P-9 & Ex.P-10, the post mortem cannot be conclusively accepted as at the time of incident,

they have not scribed, it was written at there instance and when the direct evidence of the Headmistress of the School is available wherein the deceased had studied, which is corroborated by the statement of the wife, I do not find any reason to ignore those documents issued by the Headmistress of the School as also her evidence and fall back to the post mortem report to accept the age of 50 years contrary to the school documents. Therefore, the finding of the Court below that the age of the deceased was 50 years cannot be accepted. Accordingly, it is set aside.

9. Now coming to the quantum, the Tribunal has assessed the monthly income of Rs.3000/-. Taking into the nature of job discharged by the deceased, considering the price index and when the evidence is on record that the wife of the deceased and other persons have stated that the deceased was earning Rs.4,500/-, I deem it proper to assess the income of the deceased as Rs.4000/- per month. Further, considering the age of the deceased that he was below 40 years, 50% future prospect has to be added as per the principles laid down in case of **Rajesh & Others Vs. Rajbir Singh & Others**¹ and thereby the amount comes to Rs.6000/-.
10. Now coming to the deduction towards personal expenses, the claim petition was filed by two dependents, as such, the personal deduction would be 1/3 and thereby the monthly income comes to Rs.4000/- and annual income comes to Rs.48,000/-. As the deceased was shown to be in between 36-40 years, as per the principles laid down in case of **Sarla Verma V. D.T.C.**², the multiplier

1 (2013) 9 SCC 54

2 (2009) 6 SCC 121

of 15 would be applicable. Thus, the total dependency comes to Rs.7,20,000/- (Rs.48,000 x 15).

11. Further, for loss of consortium to the wife only Rs.5,000/-, for loss of love & affection to the mother Rs.5,000/-, for loss of estate Rs.10,000/- (5000/- each) and for funeral expenses only 2,000/- have been awarded, which appears to be very low and on the meager side. Therefore, Rs.1,00,000/- is granted for loss of consortium to the wife, Rs.50,000/- is awarded for loss of love & affection to the mother including loss of estate and Rs.25,000/- is awarded for funeral expenses. Thereby, total amount comes to Rs.8,95,000/-.

12. Therefore, the calculation would be assessed as under :

S.N.	Heads	Calculation
(i)	Notional income @ Rs.4000/- per month	Rs.48,000/- per annum
(ii)	50% of (i) above to be added as future prospects.	Rs. 48000/- + 24000/- = Rs.72,000/-
(iii)	1/3 th (ii) deducted as personal expenses of the deceased.	Rs.72000 – 24000 = Rs.48,000/-
(iv)	Compensation after multiplier of 15 is applied.	Rs.48000 x 15 = Rs.7,20,000/-
(v)	Loss of consortium to the wife.	Rs.1,00,000/-
(vi)	For loss of love and affection to the mother including loss of estate.	Rs. 50,000/-
(vii)	For funeral expenses.	Rs. 25,000/-
	Total	Rs.8,95,000/-

13. Thus, the total compensation is recomputed as Rs.8,95,000/-. After deducting Rs.3,34,000/- as awarded by the learned Claims Tribunal, the enhancement would be Rs.5,61,000/-. In respect of apportionment of award, the mother will get an amount of

Rs.2,50,000/- out of the total award and remaining shall be paid to the wife.

14. In the result, the appeal is partly allowed. The appellants will be entitled to the said sum of Rs.5,61,000/- in addition to what is already awarded by the Claims Tribunal. The amount shall carry interest @ 6% per annum from the date of filing of the claim petition till the date of its realization.
15. The Registry is directed to communicate the claimants in writing the “amount enhanced in this appeal” as against the award made by the Tribunal below. The said communication be made in Hindi Devanagari language. The legal aid committee of concerned area may monitor to ensure the benefit so that the amount of compensation is disbursed to the claimants.
16. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge