NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1039 of 2010

1. Sukhantin Bai Sahu, aged about 27 years, W/o lt. Janaklal Sahu,
2. Ku. Rikeshwari Sahu, aged about 3 years, D/o Late Janaklal Sahu,
3. Smt. Pramila Sahu W/o Raisingh Sahu, aged about 50 years.
4. Raisingh Sahu S/o Halalkhor Sahu, aged about 52 years
5. Somanlal Sahu S/o Late Janaklal Sahu, aged about 6 months.
   Appellants No.2&5 are Minor, Through Natural Guardian Mother Smt. Sukhantin Bai Sahu W/o Late Janaklal Sahu,
   All are R/o Village Limhatola, Po Gudum, P.S. Dondi, Tahsil Balod, Distt.-Durg (CG)

---- Appellants

Versus

1. Ramratan, aged about 45 years, S/o Parauram Nirmalkar, R/o village and Post Sambalpur, PS & Tah. Bhanupratappur, Distt. North Bastar, Kanker (CG).
2. Jawari Lal S/o Fusruram Nai R/o Village And Post Sambalpur, P.S. And Tahsil Bhanupratappur, Distt.-North Bastar, Kanker (CG)
3. The Oriental Insurance Co. Ltd. Through Branch Manager, Branch Office Near Aadarsh Bal Mandir Behind Amar Talkies, Dhamtari, Tahsil And Distt.-Dhamtari (CG).

---- Respondents

MAC No. 818 of 2011

1. Poonam Bai Sahu, aged about 23 years, W/o lt. Ashwani Kumar Yadav,
2. Heera Bati W/o Lt. Shobharam, aged about 48 years.
   Both R/o Village Chabela, P.O. Chabela, P.S. And Tah. Bhanupratappur, District North Bastar Kanker (CG).

---- Appellants

Versus

1. Ramratan, aged about 45 years, S/o Parauram Nirmalkar, R/o village and Post Sambalpur, PS & Tah. Bhanupratappur, Distt. North Bastar, Kanker (CG).
2. Jawari Lal S/o Fusruram Nai R/o Village And Post Sambalpur, P.S. And Tahsil Bhanupratappur, Distt.-North Bastar, Kanker (CG)
3. The Oriental Insurance Co. Ltd. Through Branch Manager, Branch Office Near Aadarsh Bal Mandir Behind Amar Talkies, Dhamtari, Tahsil And Distt.-Dhamtari (CG).

---- Respondents

&

MAC No. 1040 of 2010

1. Milan Singh S/o Samji, aged about 35 years.
2. Doman Kumar S/o Milan Singh aged about 17 years.
3. Mohan Kumar S/o Milan Singh, aged about 14 years.
4. Ku. Bhaleshwari D/o Milan Singh aged about 12 years.

Appellants No. 2 to 4 are Minor, Through Natural Guardian Father Milan Singh S/o Samji,
All R/o Village Aasulkhar, Tahsil Bhanupratappur, Distt.-North Bastar, Kanker (CG).

---- Appellants

Versus

1. Ramratan, aged about 45 years, S/o Parauram Nirmalkar, R/o village and Post Sambalpur, PS & Tah. Bhanupratappur, Distt. North Bastar, Kanker (CG).
2. Jawari Lal S/o Fusruram Nai R/o Village And Post Sambalpur, P.S. And Tahsil Bhanupratappur, Distt.-North Bastar, Kanker (CG)
3. The Oriental Insurance Co. Ltd. Through Branch Manager, Branch Office Near Aadarsh Bal Mandir Behind Amar Talkies, Dhamtari, Tahsil And Distt.-Dhamtari (CG).

---- Respondents

For Appellants	:	Shri Rakesh Thakur and Shri Shashi Bhushan, Advocates.
For respondent No.2	:	Shri JK Gupta, Advocate.
For respondent No.3	:	Shri HP Agrawal, Advocate.

<u>SB: Hon'ble Shri Justice P. Sam Koshy</u>

<u>Judgment On Board</u>

<u>10.11.2017.</u>

1. These three appeals arise out of the same accident in connection with three different death case. MAC No.1039 of 2010 pertains to claim case No.03/2009 decided on 09.03.2010 wherein deceased is Janak Ram, aged around 30 years. MAC No.818 of 2011 pertains to claim case No.57/2009, decided on 30.03.2010 wherein deceased is Ashwani Kumar, aged around, 25 years and MAC No.1040 of 2010 arise out of claim case No.14/2009 decided on 09.03.2010 pertains to death of Smt. Jayanti Bai, aged around 29 years. All the three claim cases have been decided by the Additional Motor Accident Claims Tribunal (FTC), Bhanupratappur, Distt. North Bastar, Kanker (In short, the Tribunal).

2. Vide the said impugned awards, the Tribunal in the three claim applications filed under Section 166 of the MV Act in death case have awarded compensation of Rs.3,03,000/- Rs. 2,87,000/- and Rs. 3,03,000/- respectively. These are three appeals which have been filed by the claimants seeking for enhancement of compensation.
3. The ground of challenge is that the quantum of compensation awarded are on the lower side as the income assessed was not proper. He further submits that the award also deserves to be modified inasmuch as compensation under the future prospects has not been taken into consideration by the Tribunal while quantifying the compensation. Likewise, it was also contended that deduction made in the instant case considering the total number of claimants are also not proper. Further, the compensation awarded under the conventional heads are also unreasonably low. It was further contended that exoneration of insurance company is also erroneous to the extent that policy covers the risk of seven persons which includes 4 Hamals, 1 driver, 1 helper and 1 conductor totaling 7. Therefore, the insurance company should have been saddled with the responsibility of payment of compensation to the claimants.
4. Learned counsel appearing for the respondents opposes the appeals and submit that the compensation awarded by the Tribunal are just and proper and do not call for any interference.
5. Having heard the rival contentions put forth on either side and on perusal of records, so far as the ground as regards exoneration of insurance company is concerned, admittedly the factual matrix of the

case itself shows that the deceased persons in the instant case were travelling along with their goods after having paid fare to the driver. Therefore, they cannot be under any circumstances be treated as persons engaged by the owner in the said vehicle as they would not fall under any of the categories of Hamal, Driver, Helper or Conductor and under such circumstances, the findings of the Tribunal cannot be found fault with and the said ground raised by the appellants stands negated.

6. So far as the enhancement of compensation is concerned, taking note of the fact that it is an accident of the year, 2008 where even an unskilled labour would had been getting daily wage of Rs.100-200/- which would make the monthly income at Rs.3000-6000/-. As the claimants have not led any evidence with regard to income of the deceased persons, this court assess the minimum income of the three deceased at Rs.3000/- per month i.e. Rs.36,000/- annually instead of Rs.24,000/- as assessed by the Tribunal in all the claim cases.

7. Keeping in view the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimants shall be entitled for 40 percent of the income towards future prospects in all the appeals.

8. In MAC No. 1039 of 2010, accordingly, accepting the yearly income of the deceased at Rs.36,000/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.,50,400/-, of which if 1/4th is deducted towards personal expenses, the income would come to

Rs.37,800/-, which if multiplied applying the multiplier of 17, the compensation would reach to Rs.6,42,600/-. Thus, it is ordered that the claimants shall be entitled for Rs.6,42,600/- for loss of dependency. The claimants are further entitled for a lump sum compensation of Rs.57,400/- under conventional heads making total compensation at Rs.7,00,000. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.7,00,000/-.

9. In MAC No. 818 of 2011 accepting the yearly income of the deceased at Rs.36,000/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.50,400/-, of which if 1/3rd is deducted towards personal expenses, the income would come to Rs.33,600/-, which if multiplied applying the multiplier of 18, the compensation would reach to Rs.6,04,800/-. Thus, it is ordered that the claimants shall be entitled for Rs.6,04,800/- for loss of dependency. The claimants are further entitled for a lump sum compensation of Rs.70,000/- under conventional heads making total compensation at Rs.6,74,800/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.6,74,800/-.

10. In MAC No. 1040 of 2010 accepting the yearly income of the deceased at Rs.36,000/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.50,400/- of which if 1/3rd is deducted towards personal expenses, the income would come to Rs.33,600/-, which if multiplied applying the multiplier of 17, the compensation would reach to Rs.5,71,200/-. Thus, it is ordered that the claimants shall be entitled for Rs.5,71,200/- for loss of

dependency. The claimants are further entitled for a lump sum compensation of Rs.70,000/- under conventional heads making total compensation at Rs.6,41,200/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.6,41,200/-.

11. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.

12. Accordingly, all the appeals filed by the claimants are allowed and disposed of.

Sd/
(P.Sam Koshy)
Judge

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