NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.93 of 2011

1. Smt.Damyanti Panda Wd/o Late Shashibhushan Panda, age 24 years.
2. Tuleshwar Panda, age 3 years.
3. Harish Panda, age 1.5 years.

   Appellant Nos. 1 & 2 are S/o Late Shashibhushan Panda, through natural Guardian their mother Smt.Damyanti Panda.
4. Shoukilal Panda S/o Balram Panda, age 65 years.
5. Smt.Sanehlata Panda W/o Shoukilal Panda, age 63 years.

   All are R/o Village Tilanjanpur, Thana Sankra, District Mahasamund (C.G.).

---Appellants

Versus

1. Mahendr Kumar Bariha S/o Balaji, age 27 years, R/o Ramkundpara, Raipur (C.G.) at present R/o Village Salhetarai, Tahsil Basna, District Mahasamund (C.G.).
2. Manish Agrawal S/o Ishwar Prakash Agrawal, Through Santosh Agrawal Osho, Radymade Shop, Ganjpara, Raipur (C.G.).
3. The New India Insurance Company Limited, Through Branch Office 2, L.I.C. Building, commercial complex Jeevan Beema Marg, Pandri Raipur (C.G.).

---Respondents

For appellants	:	Shri Akhand Pratap on behalf of Shri Sanjay Agrawal, Advocate.
For resp.No.3/ Insurance Company.	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/11/2017

1. Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 09/11/2010 passed by the learned 7th Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No.13/2010.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.11,38,000/- with interest @ 6% per annum from the date of application.

3. The contention of the counsel for the appellants is that, the amount of income assessed by the Tribunal is on the lower side as the claimants had duly produced the Income Tax Return of the deceased which reflected the income at Rs.1,49,060/- per annum, but the Tribunal has not taken this into consideration and have given a lump sum compensation of Rs.9,00,000/- towards loss of dependency. This according to the counsel for the appellants is erroneous and the same deserves to be suitably enhanced. He further submits, that the deceased at the time of death was running a Kirana Shop and that he also had an agricultural land which generates an agricultural income also and thus the assessment of Rs.1,49,060/- of the Income Tax Return should have been taken by the Tribunal as the income of the deceased for quantifying the compensation. He further submits, that the compensation under the conventional head also is on the lower side and the same deserves suitable enhancement.

4. Considering the fact, that the finding of the Tribunal is that there was no evidence of any Kirana Shop being run by the deceased except for the oral statement made by the claimant/widow. This court so far as this contention is of the opinion that, even if the deceased had a Kirana Shop it would had still been there and operated by the present claimants. Likewise, if the agricultural land was also available with the deceased, the

same should also still be cultivated by the present claimants to get income both from the Kirana Shop and from the agricultural land.

5. In spite of that this court is of the opinion, that since the date of death was of the year 2010, under any given circumstances, the deceased must have been earning somewhere around Rs.7,500/- to 10,000/- per month with which he would have been sustaining his family. This court therefore assesses an average income of the deceased at Rs.96,000/- yearly instead of Rs.1,49,000/- as has been claimed by the claimants.

6. Accepting Rs.96,000/- as the yearly income of the deceased and if considering the total number of claimants to be 5, after deducting 1/4th towards personal expenses, the amount would come to Rs.72,000/- which if multiplied by applying multiplier of 17 considering the age of the deceased to be 30 years, the amount would come to Rs.12,24,000/-. It is ordered accordingly that the claimants shall be entitled for the compensation of Rs.12,24,000/- toward loss of dependency instead of Rs.9,00,000/- as quantified by the Tribunal.

7. Further taking into consideration the total number of claimants to be 5, this court feels that end of justice would meet if the claimants are awarded a lump sum compensation of Rs.76,000/- towards conventional head making the total compensation payable to the claimants at Rs.13,00,000/- instead of Rs.11,38,000/- as quantified by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

8. The appeal of the claimants thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit