NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 347 OF 2011

1. Smt. Chhaya Devi Dubey, Wd/o Late Parmanand Dubey, age 45 yrs
2. Ravikant Dubey S/o Late Parmanand Dubey, age 19 yrs
3. Shashikant Dubey S/o Late Parmanand Dubey, minor, hence impleaded through through his Mother Appellant No. 1

All R/o Qrt. No. 125, B.H.C.L. Colony, Ruabandha Sector, Bhilai, Tahsil & District Durg.

… Appellants

versus

1. Ravindra Soni, S/o Kalicharan Soni, R/o Ravindra Bhavan, near Pacharipara Talab, Durg, Tahsil & District Durg (C.G.)
2. Abdul Alim Khan, S/o Late Abdul Ajim Khan, R/o Near Masjid, Kelabadi, Durg, District Durg (C.G.)
3. Divisional Manager, New India Insurance Company Ltd., Thakkar Chamber, Power House, G.E. Road, Bhilai, Tahsil & District Durg (C.G.)

… Respondents

For Appellants	:	Mr. Amiyakant Tiwari, Advocate.
For Respondent No.3	:	Mr. Raj Awasthi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/12/2017

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the Eight Additional Motor Accident Claims Tribunal (F.T.C), Durg, vide its award dated 27.3.2010, passed in Claim Case No. 68/2009.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.3,11,500/- to appellants-claimants with interest thereon at the rate of 6% per annum from the date of presentation of the claim application. While passing the award, the learned Tribunal has fastened the liability for payment of compensation upon respondent no.3-insurance company indemnifying respondents no. 1 and 2 i.e. the driver and the owner of the offending vehicle i.e. a Mini Bus, bearing registration no. CG07-E-1786.

3. Learned counsel for the appellants-claimants submits that it is a case for enhancement of the compensation, as the compensation awarded by the learned Tribunal is unreasonably low. He further submits that the income assessed by the learned Tribunal is not proper and that the income under the future prospects also was not taken into account by the learned Tribunal, so also the compensation awarded under the conventional heads is on the lower side. He thus prayed for a suitable enhancement of the compensation awarded by the learned Tribunal.

4. Learned counsel for respondent no.3-insurance company however opposing the appeal submits that taking into consideration the age of the deceased and the income assessed by the learned Tribunal, there does not seem to be any error committed by the learned Tribunal while assessing the compensation. He further submits that since the deceased was aged around 54-55 years at the time of accident, he had a very few service left of employment and for this reason also the assessment made by the learned Tribunal is just and reasonable. He thus prayed for the rejection of the appeal.

5. Having considered the rival contentions put forth on either side and on perusal of records, considering the total facts and circumstances of the case, when we peruse the pay-slip of the deceased for the month of December, 2008 which has been marked as Exhibit P-8 before the Tribunal, it reflects that the gross income of the deceased was Rs.8563/- of which certain deductions were made and the net income payable was Rs.7300/-. Of the deductions which were made, Rs.893/-, i.e., approximately Rs.900/-, was deducted towards the provident fund contribution made by the deceased and which, for all practical purposes, is part and parcel of the income of the deceased as he would have got it back on his superannuation. Thus, adding this Rs.900/- to Rs.7300/- would make the monthly income of the deceased at Rs.8200/-. This Court thus assesses the monthly income of the deceased at Rs.8200/-, instead of Rs.7300/- as assessed by the learned Tribunal.

6. Further, taking into consideration a recent Larger Bench's decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited** v. **Pranay Sethi & Others**[1], the claimants would also be entitled for 15% of the income towards the future prospects.

7. Thus, adding 15% on the monthly income assessed i.e. Rs.8200/-, the net monthly income of the deceased would come to Rs.9430/- and yearly at Rs. 1,13,160/- of which if 1/3rd is deducted towards personal and living expenses, the remaining amount would come to Rs.75,440/- to which if mutiplier of 9 is applied, the total figure towards the loss of dependnecy would come to Rs. 6,78,960/- which the claimants shall be entitled to get, instead of Rs.2,92,000/- as assessed by the learned Tribunal. The claimants in addition shall also be entitled for the compensation under the conventional heads and this Court again taking into consideration the case of **Pranay Sethi** (supra), awards an amount of Rs.70,000/- to the claimants towards the conventional heads, instead of Rs.19,500/- as awarded by the learned Tribunal. Thus, making the total compensation payable to the claimants at Rs.7,48,960/-, instead of Rs.3,11,500/- which has been awarded by the learned Tribunal.

8. As a consequence, the appeal is allowed and the impugned award stands modified to the extent that the appellants-claimants shall be entitled to get a total compensation of **Rs.7,48,960/-**. The said enhanced amount shall also carry interest at the same rate as has been fixed by the learned Tribunal. Rest of the award shall remain intact.

Sd/-
(P. Sam Koshy)
Judge

/sharad/

1 SLP (Civil) No. 25590 of 2014, decided on 31.10.2017