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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 945 of 2006

1. Smt. Lais Mishra W/o late Shri Harishankar Mishra, aged about 38 years
2. Durgesh Mishra S/o late Shri Harishankar Mishra, aged about 17 years
3. Ku. Monika Mishra D/o late Shri Harishankar Mishra, aged about 13 years
4. Ku. Neha Mishra D/o late Shri Harishankar, aged about 10 years

Appellants 2 to 4 being monor on behalf of through their legal guardian mother the appellant no.1 Smt. Lais Mishra

All resident of 89/7, Railway Colony, Gudhiyari, Tehsil & District Raipur, CG

---- Appellants

Versus

1. Abdul Azim Khan, aged about 30 years, S/o Abdul Ali Khan, Jaihind Garage, Bhaisthan Road, Raipur, R/o village Khail Tukari, PO Kunada, District Kawardha (CG)
2. Ajay Kumar Jain S/o Babulal Jain, R/o C/277, Shailendra Nagar, Raipur, Tehsil & District – Raipur (CG)
3. The Oriental Insurance Company Limited through Branch Office No.2, Shri Mahavir Goushalal Parisar, Moudhapara, Raipur, Tehsil & District Raipur (CG)

---- Respondents

For Appellants	:	Shri Shivendu Pandya, Advocate
For Respondent no.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

25/08/2017

Present is an appeal under Section 173 of the Motor Vehicles Act preferred by the claimants challenging the award dated 24.12.2005 passed by the 8th Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No.18/2005 whereby the Tribunal in a claim case under Section 166 of MV Act has awarded a compensation of Rs.3,54,000/- with interest @ 9% per annum from the date of application to the claimants.

2. Counsel for the appellants submits that in the instant case, the Tribunal has erroneously accepted the age of the deceased to be 52 years whereas the documents which have been produced before this Court i.e. pension papers etc.

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would reveal that the petitioner's date of birth is 16.09.1960 that means on the date of accident the deceased was aged only around 43 years. Counsel for the appellants submits that if the age of the deceased is taken to be 43 years, the multiplier to be applied would be 14 in stead of 11 as has been taken by the Tribunal. Likewise, if the age of the deceased was less than 50 years at the time of accident, the income under the future prospects for the purpose of quantifying compensation would be 50% of the monthly income. Counsel for the appellants further submits that the deduction made by the Tribunal towards personal expenses also should be 1/4th of his income in stead of 1/3rd as has been assessed, taking into consideration the total number of claimants. Thus, prayed for enhancement of the impugned award accordingly.

3. Counsel for the Insurance Company, however, opposes the appeal and submits that the impugned award passed by the Tribunal is just and reasonable and does not warrant any interference as it is based upon the evidence which has come on record. Counsel for the Insurance Company further submits that in between, the appeal had been dismissed on more than a couple of occasions and therefore, the Insurance Company should not be saddled with the responsibility of payment of interest during the intervening period.

4. Having considered the contentions put forth on either side and on perusal of the record what has to be accepted and which cannot be disputed is the documents i.e. the pension papers enclosed along with the application filed under Order 41 Rule 27 of CPC pertaining to the deceased. As per the pension papers, the date of birth of the deceased mentioned therein is 16.09.1960 i.e. the age of the deceased was around 43 years at the time of accident. Since the pension papers are statutory documents, this Court has no hesitation in accepting the same to be the basis for determining the age of the deceased and it is therefore assumed that at the time of accident, the deceased was aged about 43 years. Once when the age of the deceased is accepted by this Court to be 43 years, for all practical purposes like for future prospects, applying of multiplier would automatically get inclusive and changed and it is ordered accordingly. Likewise, considering the fact that the claimants are the young widow and the three minor children, the deduction towards personal expenses should have been 1/4th in stead of 1/3rd and it is also ordered accordingly.

5. So far as the objection to deny interest to the claimants is concerned, this Court is of the opinion that the appeal must have been dismissed on account of the non appearance of a lawyer on a particular date but the fact that subsequently the appeal having been restored to its original number, the default so occurred has been condoned. Therefore, only because the appeal had been dismissed on a couple of occasions by itself should not be a ground for denying interest to the claimants which they are otherwise rightly entitled for. This Court accordingly quantifies the compensation payable to the claimants as under:

6. The monthly income as has been assessed by the Tribunal is accepted as the base which is Rs.6,513/- of which 50% when added towards future prospects, the amount would be Rs.9,770/- per month and Rs.1,17,240/- yearly. If 1/4th of the said amount is deducted towards personal expenses, it comes to Rs.87,930/- which if multiplied by applying the multiplier of 14 which shall be applicable in a case where the age of the deceased is 43 years, the amount for loss of dependency would be Rs.12,31,020/- in stead of Rs.3,40,208/- as awarded by the Tribunal. Likewise, considering the number of claimants and their age, this Court is of the opinion that the compensation awarded under the other heads i.e. a total compensation of Rs.13,000/- is undisputedly on a very low side which deserves to be and is accordingly enhanced to Rs.1,00,000/-. Thus, the appellants shall be entitled for a total compensation of Rs.13,31,020/- in stead of Rs.3,54,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the tribunal.

7. Accordingly, the appeal stands allowed.

Sd/-
P. Sam Koshy
Judge

Bhola