

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 900 of 2008**

1. Shakunbai, aged 45 years, W/o. Kanhaiya Yadav,
 2. Kanhaiya Yadav, aged 50 years, S/o. Shri Gopal Yadav,
- Both residents of New Chandaniaypara, Champa Road, Janjgir, P.S. and Tahsil Janjgir, District Janjgir-Champa, Chhattisgarh

---- Appellants**Versus**

1. Leeladhar Thawaith, Aged 21 years, S/o. Raj Kumar Thawaith,
2. Rajendra Kumar Thawaith, S/o. Raj Kumar,
3. Branch Manager, United Insurance Co. Ltd. Korba, Tahsil and District Korba, Chhattisgarh
4. Smt. Leela Bai, aged 22 years, Wd/o. Deepak Yadav, R/o. Chandaniyapara, Janjgir, At present R/o. Nawapara, Tahsil and District Janjgir-Champa, Chhattisgarh

----Respondents

For Appellants	:	Mr. Ram Kumar Tiwari, Advocate
For Insurance Company	:	Mr. H.B. Agrawal, Sr. Advocate along with Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/10/2017**

1. None for the respondents No.1, 2 and 4.
2. Present is an appeal by the Claimants assailing the order dated 02.05.2007, passed by the Additional Motor Accident Claims Tribunal, Janjgir, Chhattisgarh, in Claim Case No. 61/2005.
3. Vide the impugned award, the Tribunal has ordered for payment of compensation of Rs.96,000/- with interest @6% per annum to the Claimants.
4. The fact of the case is that the deceased Deepak Yadav, aged around 27 years met with an accident when he was travelling on a motorcycle was hit by another motorcycle bearing registration No.

CG-11-B-7990 owned by the respondent No.1 and driven by the respondent No.2, who are father and son, respectively.

5. The present appeal has been filed seeking for enhancement of the compensation awarded on the ground that the income assessed by the Tribunal is on the lower side and that the Tribunal has also not assessed the future prospects, while computing the compensation and prayed for suitable enhancement.
6. The counsel for the Insurance Company however opposing the appeal submits that it is a case where the finding of the Tribunal does not warrant interference. It is based on the evidence, which have come on record and the fact that there is also a finding of contributory negligence against the present appellant and thus prayed for rejection of the appeal.
7. Having considered the contentions put forth by the counsel for either side and on perusal of the record, since the accident and resultant death of the deceased is not in dispute and the vehicles involved in the accident also not in dispute, the only issue left to be considered is whether the compensation quantified is just and reasonable or not. The Tribunal in the instant case has taken the notional income of the deceased at Rs.15,000/-. The date of accident in the instant case is March, 2005 and that during the said period undisputedly the minimum wages that a daily wage worker was getting was more than 100/- a day that would make Rs.3,000/- a month and Rs.36,000/- an year and therefore for all practical purposes the notional income of the deceased also should had been taken at Rs.36,000/- and the impugned award thus is modified to the aforesaid extent.

8. Further, the law is also by now well settled that in a death case the income under the future prospects also has to be borne in mind while computing the compensation. Considering the age of the deceased, the future prospects to be added would be 50%. Accepting Rs.36,000/- as the annual income of the deceased 50% of the same would be Rs.18,000/- towards future prospects, which would make the amount at Rs.54,000/- of which if 1/3 is deducted towards personal expenses the amount would come to Rs.36,000/-, which if multiplied applying the multiplier of 17, the amount would come to Rs.6,12,000/-. Since there is a categorical finding of contributory negligence of the ratio of 60 to 40 as per the finding of the Tribunal, the Claimants would be entitled for only 40% of the compensation quantified. Thus, 40% of Rs.6,12,000/- is Rs.2,44,800/-. It is ordered accordingly that the Claimants shall be entitled for the compensation of loss of dependency of Rs.2,44,800/-. In addition, the Claimants shall also be entitled for the compensation under the conventional head. Considering the judgment of the Hon'ble Supreme Court in the case of **"Rajesh and others vs. Rajbir Singh and others"** (2013(9) SCC 54), this Court quantifies the compensation under conventional head at lump sum amount of Rs.1,00,000/-.
9. Thus, the total compensation payable to the Claimants would be Rs.3,44,800/-. The apportionment of the compensation shall remain the same in the same proportion as has been made by the Tribunal i.e. half of the enhanced amount would go to the widow and the remaining half to the present appellant. Thus, the appellant would be entitled for compensation of Rs.1,72,400/- and the remaining

Rs.1,72,400/- shall go to the widow. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. The Registry is directed to send a copy of this judgment to the Secretary, District Legal Services Authority, Janjgir-Champa, Chhattisgarh, where the respondent No.4 resides with a direction that he should ensure that the copy of this judgment is served upon the respondent No.4 at the earliest.

Sd/-
(P. Sam Koshy)
Judge

Ved