

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 481 of 2015

1. Smt. Sandhya Das Vaishnava W/o Late Bharat Kumar Vaishnav Aged About 24 Years R/o Village Jamgala P.S. & Tehsil-Lakhanpur District-Surguja, Chhattisgarh.
2. Sameer Das Vaishnav S/o Bharat Kumar Vaishnav Aged About 4 Years Minor Through Natural Guardian Mother Smt. Sandhya Das Vaishnava, R/o Village Jamgala P.S. & Tehsil-Lakhanpur District-Surguja, Chhattisgarh
3. Ku. Rashmi Vaishnav D/o Bharat Kumar Vaishnav Aged About 2 Years Minor Through Natural Guardian Mother Smt. Sandhya Das Vaishnava, R/o Village Jamgala P.S. & Tehsil-Lakhanpur District-Surguja, Chhattisgarh.
4. Smt. Koushilya Bai W/o Paras Nath Vaishnav Aged About 55 Years R/o Village Jamgala P.S. & Tehsil-Lakhanpur District-Surguja, Chhattisgarh.
5. Paras Nath Vaishnav S/o Late Shanker Vaishnav Aged About 60 Years R/o Village Jamgala P.S. & Tehsil-Lakhanpur District-Surguja, Chhattisgarh

---- Appellants

Versus

1. Jeet Kumar @ Ajeet Yadav S/o Chaituram Yadav Aged About 36 Years R/o Village Jamgawaon P.S. - Darima District-Surguja, Chhattisgarh.
2. Bachcha Lal Gupta S/o Late Raghubir Prasad Gupta R/o Village-Badadamali Post-Nandamali P.S. - Darima District-Surguja, Chhattisgarh.
3. Branch Manager The Oriental Insurance Company Limited Branch Office Manendragarh Road Ambikapur Tehsil- Ambikapur Distt.-Surguja, Chhattisgarh.
4. Ajesh Giri S/o Late Rajendra Giri R/o Village- Sohaga Post-Karji P.S.- Darima District-Surguja, Chhattisgarh.
5. National Insurance Company Ltd. Mandal Office B-1 Taha Complex 1st Floor Ring Road No. 1, Priyadarshani Nagar Bilaspur Distt.-Bilaspur, Chhattisgarh

---- Respondents

For Appellants` : Mr. A.N. Pandey, Advocate

For Respondent No.3 : Mr. Ratan Pusty, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

18-07-2017

1. The instant appeal filed under Section 173 of the Motor Vehicle Act, 1988 is against the award dated 2-2-2015 passed in Claim Case No. 12 of 2013 by 3rd Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja (CG) whereby the claim petition of the claimant was partly allowed by awarding a total compensation of Rs.6,42,000/- as against the total compensation of Rs.16,15,000/-.
2. Briefly stated facts of the case are that the claim petition was filed by one Smt. Sandhya Das Vaishnava, wife of the deceased Bharat Kumar Vaishnava along with two minor children and mother Smt Koushilya Bai and father Parasnadh Vaishnav of the deceased with the averments that on 20-4-2013 deceased Bharat Kumar along with his father-in-law who was sitting as a pillion rider had gone to village Sohage on motor-cycle for distributing the marriage cards and while they were coming back to village Jagmata by motor-cycle, at that time, another vehicle ie., Bus bearing Registration No.CG 14-A 0869 coming from opposite direction driven by Jeet Kumar, non-applicant No.1 in rash and negligent manner dashed deceased whereby both of them sustained grievous injuries and died on the spot. It was stated by the claimants that deceased Bharat Kumar Vaishnav was a Mason and used to earn 8,500/- per month and used to spend Rs.2,000/- towards

his personal expenses and thereby on his death, the claimants who are dependents of the deceased had deprived of his income i.e., Rs.6,500/- and consequently on various heads the claimants have claimed a total compensation of Rs.16,15,000/- for the death of deceased Bharat Kumar Vaishnava.

3. During the course of trial, the Claims Tribunal came to the finding that on 20-4-2013 the Bus bearing registration No. CG 14-A/0869 which was being driven by non-applicant Jeet Kumar, non-applicant No.1 and owned by non-applicant No.2 Bachha Lal Gupta, had dashed the deceased Bharat Kumar Vaishnava whereby he died. The finding was also arrived at that at the relevant time of accident, the driver of the Bus having requisite papers had a valid licence and consequently, the liability was fastened on the Insurance Company. The instant case is for enhancement of the award.
4. Learned counsel for the claimants/appellants submits that the Tribunal has failed to assess the income of the deceased properly and future income has also not been given, therefore, the award is meagre. He would further submit that loss caused to the parents, children and wife has also not been compensated properly. Therefore, he submits that the award passed by the Tribunal may suitably be enhanced.
5. *Per contra*, learned counsel appearing on behalf of respondent No.3 would submit that the award passed by

the Claims Tribunal is well merited which does not call for any interference.

6. I have heard the learned counsel for the parties at length and have perused the documents and evidence on record.
7. Perused the record of the court below. Wife of the deceased Smt. Sandhya Das Vaishnava aged about 25 years has contended that her husband was working as Mason and entire family was being looked after by him, therefore, compensation of Rs.16,15,000/- was prayed. In her cross examination, suggestion was admitted that her husband used to earn Rs.8,500/- per month, but no document has been placed on record to prove the same. Taking into such statement of the wife of the deceased, assessment of income of the deceased which has been held to be Rs.4,500/- per month as held by learned Claims Tribunal appears to be just and proper. Further, it shows that the deceased was working as Mason and no future prospectus have been awarded, therefore, following principles of law laid down in **Rajesh & others Vs. Rajbir Singh & others reported in (2013) 9 SCC 54** are required to be applied in this case. Since the deceased was shown to be aged about 26 years as per post-mortem report which is marked as Ex.P/5 which was shown to be less than 40 years, it would be appropriate to add 50% to the income of Rs.4,500/- towards future prospects which comes to Rs.2,250/- and thus total income is worked out to Rs.6,750/- (4,500/- plus 2250/-). Further, the tribunal deducted 1/3rd towards personal expenses, but taking into

fact that the claim petition was preferred by 5 claimants i.e., wife, two minor children and parents of the deceased therefore, it would be appropriate to deduct 1/4th towards personal expenses as per the **Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 121**. Wife of the deceased appears to be aged about 24 years having two minor children, therefore, loss of consortium requires to be enhanced along with amount granted for loss of love and affection to the children and parents. Consequently, the total compensation to be re-assessed as follows:

S.No.	Heads	Calculation
	Notional income @ Rs.4500/-per month plus 50% of the income to be added as future prospects comes to Rs2,250/- whereby the amount comes to Rs.6750/-	Rs.81,000/- per annum
ii)	One fourth of (i) deducted as personal expenses of the deceased (Rs.6750/- - Rs.1687/-) comes to Rs.5063/- per month and compensation after multiplier of 17 is applied as the deceased was less than 30 years.	Rs.10,32,852/-
iii)	Loss of consortium to wife	Rs.1,00,000/-
iv)	Loss of love and affection to 2 minor children @ Rs.50,000/- each	Rs.1,00,000/-
v)	Loss of love and affection to mother and father @ Rs.30,000/- each	Rs.60,000/-
v)	Funeral expenses	Rs.25,000/-
	Total compensation comes to	Rs.13,17,852/-

8. Thus, the total compensation will be Rs.13,17,852/-. After deducting Rs. 6,42,000/- awarded by the tribunal, the enhancement would be Rs. 6,75,852/-. The said amount shall carry interest @ 6% per annum as awarded by the Tribunal from the date of filing of claim petition till the date of realization.

9. In the result, the appeal is partly allowed. The claimants will be entitled to receive Rs. 6,75,852/- in addition to what is already awarded. So far as it relates to apportionment, two minor children shall get Rs.1,00,000/- each and the remaining amount shall be disbursed to the wife.
10. The Registry is directed to communicate the claimants in writing the “amount of award enhanced in this appeal” as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language and preferably the same may be communicated through Gram Panchayat of the concerned village of the claimants/appellants.

Sd/-

(GOUTAM BHADURI)
Judge

Raju