NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1145 of 2013

1. Smt. Geeta patel Wd/o Chandrakant Patel, aged about 42 years

2. Master Harsh Kumar Patel S/o Late Chandrakant Patel, aged about 13 years

3. Smt. Savita Ben Wd/o Late Jivraj Bhai Patel, aged about 68 years

   Appellant No. 2 is minor through appellant No.1 Smt. Geeta Patel (Mother), All residents of C/o Vinayak Brothers, Plot No. 6-7, Block A, Sirgitti, Tahsil and District Bilaspur, CG

---- Appellants/Claimants

Versus

1. Ganesh Ram Ladtre S/o Shyamlal Ladtre R/o Ramnagar Behind Muktidham School, Ward No. 12, Supela, PS Supela, District Durg, CG **(Respondent/Driver)**

2. Shekh Mustkim S/o Shekh Mohd. Yunus, R/o Ramnagar, Indra School, Near Sai Mandir, Supela, PS Supela, District Durg. **(Respondent/owner)**

3. The National Insurance Co. Ltd. Through Divisional Manager, Division Office, Taha Complex, Vyapar Vihar Road, Bilaspur **---- Respondent/Insurer)**

For Appellants	-	Shri A.N. Singraul, Advocate.
For Respondents 1& 2	-	None appeared.
For Respondent No.3	-	Shri Gautam Khetrapal, Advocate

Hon'ble Shri Justice Pritinker Diwaker and Hon'ble Justice R.P. Sharma

Order on Board

24/07/2017

This appeal arises out of the award dated 10.10.2013 passed by Additional Motor Accident Claims Tribunal (for short the "Tribunal") Bilaspur in Claim Case No. 183/2010 awarding a compensation of Rs. 06,44,000/- in favour of the appellants/claimants for the death of Chandra Kant Patel.

2. Facts of the case in brief are that on 1.6.2010 when the deceased along with his daughter was going to village Kumhari on his motorcycle and when he reached near the Power Grid area, a 407-matador bearing registration No. CG-07-ZB-0794 driven by respondent No.1 herein in a rash and negligent manner came from behind and in a bid to overtake from the wrong side hit the motorcycle ridden by the deceased as a result of which he and his daughter came under the wheel leading to the tragic death of Chandra Kant Patel in the hospital during treatment.

3. A claim petition was filed by the appellants/claimants who happen to be the legal heirs of the deceased claiming a compensation of Rs. 46,50,000/- *inter alia* pleading that the deceased at the relevant time was aged about 48 years, he was was dealing in the business of timber and earning in between Rs. 20,000/- and 30,000/- per month.

4. Pleadings of the claimants have, however, been denied by all the respondent – driver, owner and the insurance company.

5. After evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs. 6,44,000/- in favour of the appellants/claimants and while doing so the monthly income of the deceased has been taken as Rs. 6000/- and annual being 72,000/- and then multiplier of 13 has been applied. In the course

of assessment, the Tribunal has deducted 1/3rd of his income which comes to Rs. 24,000/- towards his personal expenses and thus the annual loss of dependency has been taken as Rs. 48,000/- which the deceased might be spending on his dependents. Hence this appeal for enhancement.

6. Counsel for the appellants/claimants submits that the finding recorded by the Tribunal in taking the monthly income of the deceased as Rs. 6000/- is erroneous because being a timber merchant he was earning Rs. 20,000 – 30,000/- per month. He submits that the Tribunal has further fallen in error in not not awarding anything for the future loss of income. The amount awarded on conventional heads is also contended to be too much on the lower side and hence the overall compensation awarded by the Tribunal needs a re-look and consequent enhancement.

7. On the other hand, counsel for the respondent/insurance company supports the award impugned.

8. Heard counsel for the parties and perused the documents on record.

9. From the pleadings of the respective parties and the overall evidence on record it is clear that the accident occurred with the offending vehicle which was insured with respondent No.3 and was being driven by respondent No.1 in a rash and negligent manner. Since no evidence was adduced by the appellants/claimants in support of the fact that how much the deceased was earning out of the work he was engaged in, the monthly income taken by the Tribunal as Rs. 6000/- cannot be said to be at fault. Further, considering the age of the deceased in between 46 and 50 years

30% of the monthly income is to be added towards future prospects and doing so his monthly income comes to Rs. 7,800/- and the annual one rises to 93,600/-. Since the deceased is survived by three dependents, 1/3 of the annual income is required to be deducted towards his personal and living expenses and if that is done the annual loss of dependency comes to Rs. 62,400/- and by applying the multiplier of 13 the total loss of dependency comes to Rs. 8,11,200. As regards the conventional heads like loss of estate, loss of consortium, loss of love and affection, funeral etc. this Court thinks it proper to award a lump sum amount of Rs. 2,00,000/- making the total compensation as 10,11,200 for which the claimants are entitled.

10. Thus, the total compensation including the amount awarded on conventional heads comes to Rs. 10,11,200/- which the claimants are entitled to receive. Since the appellants/claimants have already been awarded a compensation of Rs. 6,44,000/- they are now entitled for the enhanced compensation of Rs. 3,67,200/- with interest @ 9% per annum from the date of application till realization. The amount received by the claimants, if any, shall be adjustable in the enhanced sum.

11. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge

Jyotishi