NAFR

HIGH COUT OF CHHATTISGARH AT BILASPUR

MA No. 1252 of 2005

1. Smt. Tulsi Bai, Age 45 years, W/o. Late Shri Sewak Ram Thakur,
2. Daneshwar Kumar, Age 18 years, S/o. Late Shri Sewak Ram Thakur,
3. Ku. Nirmala, Age 12 years, D/o. Late Shri Sewak Ram Thakur,
4. Sohan Kumar, Age 11 years, S/o. Late Shri Sewak Ram Thakur,
5. Smt. Maanki Bai, Age 65 years, W/o. Late Shri Sombaru Ram Thakur,
   All appellants No. 1 to 5 are R/o. Ward No.6, Lalpur, Bagabahara, PS Bagbahara, Tahsil and Distt. Mahasamund (C.G.)

---- Appellants

Versus

1. Mohd. Rafeeque, S/o. Mohd. Mohtaab, R/o. Ward No.15, Khariyar Road, PS Khariyar Road, Distt. Nayapra (Orrissa)
2. Executive Engineer, Mechanical P.H. Division No.1, Bhubaneshwar (Orrissa), Through: Executive Engineer RWSS Division Bhawanipatna, Kalahandi, District Bhawanipatan, Kalahandi (Orrissa)

---- Respondents

For Claimants	:	Mr. A.L. Singroul, Advocate (Amicus appointed by the Court)

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/08/2017

1. None appears for the appellant. Considering the fact that the appeal is of the year 2005 i.e. more than 12 years, this Court is for seek of disposal of the appeal by taking assistance of Shri A.L. Singroul, Advocate. The present is an appeal under Section 173 of Motor Vehicle Act filed by the claimants assailing the award dated 12.05.2005, passed by the Additional Motor Accident Claims Tribunal, Mahasamund, in Claim Case No.134/2004. Vide the said impugned award the Tribunal in a proceeding under Section 166 of Motor Vehicle Act in a death case has awarded the total compensation of Rs.6,53,276/- with interest @ 6% per annum. It is

this award which is under challenge by the claimants seeking for enhancement of the compensation awarded.

2. According to the counsel for the appellant, the Court below has not properly appreciated monthly income of the appellant and has deducted an amount of Rs.1000/- which was otherwise also his income under the provident fund as well as under the insurance scheme, which also ought to have been taken into consideration for quantifying the compensation. It was also contended by the counsel for the appellant that since the appellant was a government employee and that there was all likelihood of revision of the salary, there would have definitely been a future rise in the income of the deceased. It was further contended that the multiplier which has been applied by the Tribunal also on the lower side as per the judgment of the Supreme Court in case of ***"Sarla Verma and others vs. Delhi Transport Corporation and another" [2009 (6) SCC 121]***. the multiplier would have been that of 11 instead of 9 which has been taken into account by the Tribunal. The further contention of the counsel for the appellant was that deduction made towards personal expenses of 1/3 was also improper as considering the total number of claimants to be five, the deduction should had been of that of 1/4th and not 1/3rd. For all the aforesaid reasons of the counsel for the appellant submitted that the impugned award deserves to be suitably modified.

3. None appears for the respondents. The office report shows that service on the respondents has been duly effected and yet there is no representation on behalf of the respondents, though the appeal is pending before this Court for more than 12 years. In the absence any representation on behalf of the respondents, this Court proceeds to decide the matter ex-parte against the respondents.

4. Having considered the contentions put forth by Shri A.L. Singroul, Advocate assisting the Court on behalf of the claimants, we find that the pay-slip of the deceased Sewak Ram, aged around 51 years of the month of April, 2004 i.e. the previous month on the date of death. In the said pay-slip, the salary of the deceased was shown at

Rs.11,058/-. The tribunal has accepted the salary of the deceased at Rs.10,058/- deducting the deductions made from the salary of the deceased. This Court is of the opinion that the deductions so made by the Tribunal was not proper as the deductions which is reflected from the pay-slip towards the provident fund as well as the Group Insurance Fund. Both these deductions later on are receivable by the deceased on his superannuation and as such it is also the income which should not have been deducted from the wages/income of the deceased. Thus for quantifying the compensation for all practical purposes, the income of the deceased has to be accepted at Rs.11,058/-.

5. Though in the judgment of the Supreme Court in case of Sarla Verma (supra) it has been enunciated that for a person aged more than 50 years, there would be no calculation under the head of future prospect, but subsequently in the case of ***Rajesh and others v. Rajbir Singh and others [2013 (9) SCC 54]***, the Supreme Court referring to the judgment of Sarla Verma (supra) and other judgments subsequently decided i.e. ***Santosh Devi vs. National Insurance Company Limited and others, [2012(6) SCC 421]*** have held that in the event of the death of deceased person in the group of 50-60 the future income of 15% should be taken into account for the calculating purposes. Though this judgment has been subsequently placed before the Larger Bench for further consideration, however till date as the said judgment has not been overruled by the Supreme Court and the fact that the said judgment has been passed considering the aspect of the periodical rise of income as also rise of cost of living into consideration, this Court is of the opinion that in the present case also since undisputedly the deceased was a Headmaster of a Government School and that the deceased at the time of accident was aged only around 51 years and the date of accident being 08.05.2004 and everyone knows that there was a revision of pay, which was brought into force by the state government employee w.e.f. 01.01.2006 and which would had been also effected in the case of the deceased also had he not died and thus in the opinion of this Court the income of the deceased would

had been sufficiently increased w.e.f. 01.01.2006 and that there was about 11-12 years of service left for the deceased before retirement.

6. Considering the aforesaid facts, this Court is of the opinion that applying the analogy laid down by the Supreme Court in the case of Rajesh vs. Rajbir (supra), it would be just and reasonable, if 15% of his income is added towards future prospect. Likewise this Court also is of the opinion that the multiplier applied also ought to had been 11 instead of 9 as has been envisaged in the judgment of the Supreme Court in the case of Sarla Verma (supra). In view of the same, if we calculate the compensation payable to the deceased, it would be Rs.11,058/-, which is the monthly wage of the deceased and if the said is multiplied by 12, the early income of the deceased would reach to Rs.1,32,696/-.If we add 15% of this towards future prospect i.e. Rs.19,904/- the total income of the deceased would be Rs.1,52,600/-. Considering the fact that total number of claimants are more than three, which in the instant case is five, the deduction towards the personal expense also in the light of the judgment of the Supreme Court in the case of Sarla Verma (supra) would be 1/4th and not 1/3rd as has been assessed by the Tribunal. If 1/4th i.e. Rs.38,150/- is deducted from 1,52,600/-, the net figure would be Rs.1,14,450/- as the yearly income of the deceased. If the said annual income is multiplied by applying the multiplier of 11 instead of 9 as assessed by the Tribunal, the total amount would become Rs.13,73,400/-. Thus the claimants shall be entitled for a compensation towards loss of dependency of Rs.13,73,400/- instead of Rs.6,43,776/- as awarded by the Tribunal. Further when we look into the compensation paid under the other heads also it would clearly reflect that an amount of Rs.9,500/- awarded to the five claimants under other heads is also on an extremely lower side and this also deserves to be enhanced.

7. Taking note of the ratio laid down by the Supreme Court in the case of Rajesh vs. Rajbir (supra), the opinion of this Court in the ends of justice would meet if the claimants are ordered to be entitled for a lump sum compensation of Rs.1,00,000/- under the other heads instead of Rs.9,500/- as awarded by the Tribunal. Thus the total

compensation, which would be payable to the claimants would be Rs.14,73,400/- instead of Rs.6,53,276/- as awarded by the Tribunal. Accordingly the claimants shall be entitled for additional enhanced amount of Rs.8,20,124/- in addition to what has already been awarded. The said enhanced amount shall also carry the interest at the same rate as has been awarded by the Tribunal. Rest of the conditions enumerated in the award shall remain intact. With the aforesaid modification the appeal of enhancement is allowed. At this juncture this Court extends a word of appreciation to Shri A.L. Singroul, Advocate for the valuable assistance that he has rendered in the disposal of the case.

Sd/-
(P. Sam Koshy)
Judge

Ved