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HIGH COURT of CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 624 of 2015

1. Smt. Alpana John Wd/o Late Navin Smith Johan aged about 32 years, R/o Nadan Gali Shanti Nagar Ward Jagdalpur District- Bastar, Chhattisgarh
2. Miss Shreya Sharmain Johan D/o Late Navin Smith Johan aged about 8 years, Minor Through Their Mother Smt. Alpana Johan, R/o Nadan Gali Shanti Nagar Ward Jagdalpur District- Bastar, Chhattisgarh
3. Master Rainil Johan S/o Late Navin Smith Johan aged about 3 years, Minor Through Their Mother Smt. Alpana Johan, R/o Nadan Gali Shanti Nagar Ward Jagdalpur District- Bastar, Chhattisgarh
4. Smt. Shanta Gilward John W/o M.G. John aged about 60 years, Minor Through Their Mother Smt. Alpana Johan, R/o Nadan Gali Shanti Nagar Ward Jagdalpur District- Bastar, Chhattisgarh

---- Appellants

Versus

1. Smt. Khushwant Kaur Parihar W/o P.S. Parihar aged about 45 years, R/o Gandhi Nagar Ward Jagdalpur District- Bastar, Chhattisgarh
2. Govind Verma S/o Chhotelal Verma aged about 35 years, R/o Gangamunda Ward Jagdalpur District Bastar C.G., Through Parmjeet Singh Parihar Supreme Automobiles Geedam Road Jagdalpur District-Bastar, Chhattisgarh
3. The Oriental Insurance Company Limited through : Branch Manager Main Road Jagdalpur District- Bastar, Chhattisgarh
4. Smt. Mohani Rathi Wd/o Late Chandresh Kumar Rathi aged about 35 years, R/o Near Shankar Devalay Balajee Ward Jagdalpur District Bastar, Chhattisgarh
5. The Reliance Insurance Co. Ltd. Shop No. 412,413, Ravi Bhawan 04 Manjit Jay Stambh Chowk Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Pravin Ku. Tulsyan and Shri Siddharth Bajpai, Advocate
For Respondent no.3	:	Shri Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

17/07/2017

Present is an appeal for enhancement filed by the claimants under Section 173 of the Motor Vehicles Act. The challenge is the award dated 27.09.2014 passed by the 1st Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur in Claim Case No.97/14.

2. The brief facts of the case are that the deceased Navin Smith was working as a driver in a Tavera car bearing registration No. CG17D 0731 which was owned by respondent no.4. On 19.01.2008, while the deceased was driving the car, it was dashed by a truck bearing registration No. CG17H 1098 coming from the opposite direction belonging to respondent no.1, driven by respondent no.2 and insured with respondent no.3. As a result of the accident, Navin Smith sustained grievous injuries on account of which he succumbed on the spot against which the family members of the deceased i.e. wife, children and mother of the deceased filed a claim application under Section 166 of Motor Vehicles Act.

3. The Tribunal considering the pleadings and evidences which have come on record awarded the compensation of Rs.5,17,500/- to the claimants.

4. It is this award which has been challenged by the appellants seeking enhancement.

5. There are three fold arguments made by the counsel for the appellants. First was that the wage which has been taken into account by the Tribunal of Rs.3,000/- is on the lower side. Counsel for the appellants submits that the deceased was an income tax payee and he has produced the income tax return showing his annual income to be Rs.98,500/- and therefore, the wages should have been calculated on this basis and the impugned award deserves to be enhanced suitably. He further submits that the multiplier applied was also wrong as the age of the deceased was 37 years and therefore the multiplier should have been 16 in stead of 15 as has been taken by the Tribunal. Likewise, it was further argued that no compensation under the head of future prospects has been awarded. Thus, prayed for modification of the impugned award under these grounds suitably.

6. Per contra, counsel appearing for the Insurance Company opposing the appeal submits that taking into consideration the entire facts of the case particularly the income tax return, the wages of the deceased was taken into consideration and therefore, the award seems to be fair and reasonable and does not warrant any interference.

7. Having considered the rival contentions put forth on either side and on perusal of the record, the undisputed facts are the date of accident, the vehicle involved in the accident, the accident arising on account of the rash and negligent driving of the offending truck belonging to respondent no. 1, driven by respondent no.2 and insured by respondent no.3. The fact that the deceased was working as a driver with respondent no.4 is not disputed. The deceased died in the course of the said accident is also not in dispute.

8. In view of the same, what is to be considered is whether the wage taken into consideration by the Tribunal of Rs.3,000/- a month is proper, legal and justified. Undisputedly and which stands unrebutted from the evidence led by the parties is the fact that the deceased was working as a driver with respondent no.4. The accident is of the year 2008. During the said period also the wage of a driver which falls in the category of skilled labour would have been more than Rs.150/- a day i.e. somewhere around 4,500 to 6,000/- a month. The income tax return which has been produced before the Tribunal shows the salary of the deceased to be Rs.36,000/- which makes it Rs.3,000/- per month. There were other sources of income also reflected in the return of Rs.62,500/-. This amount definitely would be inclusive of certain daily allowances which the deceased received in the course of discharge of his duty as a driver. The recent decision of the Supreme Court in this regard is that the daily allowance has also to be taken into consideration as part of the wages for the purpose of quantifying the compensation. Thus, this Court is of the opinion that in the year 2008 when the accident took place, the wages of the deceased should have been Rs.4,500/- in stead of Rs.3,500/- inclusive of the daily allowances and the impugned award thus is ordered to be modified accordingly.

9. Thus, the compensation towards loss of income would be Rs. 6,48,000/- after deduction of 1/3 towards his personal expenses. Undisputedly, the deceased at the relevant point of time was aged about 37 years. Therefore, he would definitely have received further rise in his salary and other allowances in future times to come. Taking into consideration the judgments of the Supreme Court in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** as also in the case of **Rajesh and others vs. Rajbir Singh and others**[1] 50% amount of yearly income should also be taken into consideration for the purpose of future prospects. The multiplier applied by the Tribunal does not warrant interference as the same is in accordance to the judgment of Sarla Verma rendered by the Supreme Court.

10. Thus, if Rs.4,500/- is his monthly income, the yearly income would be Rs.54,000/- and if we add 50% of this towards future prospects, it becomes Rs.81,000/- . If we deduct 1/4th from it for personal expenses, the amount would be Rs.60,750/- which if multiplied by the multiplier of 15, it will be Rs.9,11,250/-. Thus, the amount of compensation under the head of loss of income would be Rs.9,11,250/- in stead of Rs. 4,72,500/- as awarded by the Tribunal. All other amount awarded by the Tribunal under the other heads including interest part shall remain intact.

11. With the aforesaid modification to the impugned award, the present appeal stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola

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[1] (2013) 9 SCC 54