NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 668 of 2012

- Lakhu Sahu S/o Dukalu, R/o Village Navapara, Post, Amoda, P.S. Navagarh, Dist. Janjgir, Champa C.G.

---- Appellant (Claimant)

Versus

1. Shyam Lal, aged about 30 years, S/o Dukhram, Caste-Suryavanshi, R/o village Jharra, P.S. Sargaon, Tahsil Bamnidih, Distt. Janjgir Champa (CG) (Driver)

2. Lilamber Prasad Sharma,S/o Uditnarayan Sharma, R/o Q. No. M.Q./434, Urja Nagar, Deepika Colony, Dist. Korba C.G. (Owner)

3. National Insurace Co. Ltd. Through Branch Office 13, Meenu Complex, Kosabadi, Korba, Dist. Korba C.G. (Insurer)

---- Respondents

For Appellant:	Shri Vikas Shrivastava, Advocate appears under the authority of Shri Ramakant Pandey, Advocate.
For Respondent No.1 & 2	None
For Respondent No.3:	Shri Gautam Khetrapal, Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

Per P. Diwaker, J

17/07/2017

1. This appeal filed by the claimant/appellant arises out of the award dated 27.3.2012 passed by the Additional Motor Accident Claims Tribunal, Janjgir, District Janjgir-Champa (henceforth 'the Claims Tribunal') in Claim Case No.26/2009 whereby in an death case compensation of Rs.87,000/- has been awarded to the claimant.

2. Facts of the case, in brief, are that on 1.4.2009 deceased Peen Bai was travelling as a pillion rider on a bicycle which was being plied by her son and they were going to village Sarwani from Nawapara. At about 8.45 in the morning when they reached at Main Road, Jharra, the offending vehicle i.e. Bolero No.CG12-T-0197 being driven by respondent No.2 herein rashly and negligently, came from the back side and hit against the said bicycle on which deceased Peen Bai was travelling as a result of which she received grievous injuries and died on the spot itself. The claimant/ appellant filed a claim petition before the Claims Tribunal seeking compensation to the tune of Rs.5,00,000/- arraying the driver, owner and insurer of the offending vehicle as non-applicant nos.1, 2, & 3 respectively on the ground that at the time of accident the deceased was earning Rs.80/- per day, however, on account of untimely demise of the deceased a loss of income has occasioned to him and therefore, he is entitled to the compensation as claimed by him.
3. The respondents No.1 & 2 filed their written statement before the Claims Tribunal denying the averments made in the claim application. Respondent No.3 Insurance Company by filing written statement contested the case on the ground that respondent No.1 herein was not having valid & effective license to drive the vehicle in question and that the vehicle has been plied without there being any valid permit and therefore the insurance company is not liable for making payment of compensation to the claimant.

4. By the impugned award, the Claims Tribunal has awarded compensation of Rs.87,000/- with interest @ 9% p.a. to the claimant/appellant. It is this award which has been challenged by the claimant in this appeal for enhancement.

5. Counsel for the appellant submits that;-

   - the Tribunal erred in fixing the notional income of the deceased as Rs.15000/-.
   - the proper multiplier that could be applied to the appellant's claim is 11, however, the Tribunal has applied multiplier of 8.
   - Compensation awarded under the conventional heads is also on lower side and requires to be enhanced suitably. Even no amount has been awarded under various heads like loss of estate etc.

6. On the other hand, it has been argued on behalf of the counsel for respondent No.3 that in the facts and circumstances of case, the compensation awarded by the Claims Tribunal is just and proper and requires no further enhancement.

7. Heard counsel for the parties and perused the material available on record.

8. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meagre amount of compensation, nor a Bonanza.

9. Now we shall examine as to whether the compensation of Rs.87,000/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

10. True, the claimant/appellant pleaded that deceased used to earn Rs.2,400/- per month by working as labour in the National Employment Guarantee Scheme, no cogent and reliable evidence was led before the Tribunal to establish the income of the deceased to the extent of Rs.2,400/- per month. Therefore, we do not find any fault in the approach

of the Tribunal in discarding the appellant's evidence about the income of the deceased. Nevertheless, the income of the deceased assessed by the Tribunal at Rs.15,000/- per annum in the year 2009 is certainly on the lower side and requires reconsideration.

11. Considering that deceased Peen Bai, on the date of accident, was aged about 55 years, we are of the opinion that she could have easily earned Rs.200/- per day in the year 2009 by working as an unskilled labour. We, therefore, propose to recompute the compensation taking the income of the deceased at Rs.6,000/- per month and Rs.72,000/- per annum. There being only one claimant, the deduction of 50% towards personal expenses of the deceased from his annual income would be just and proper. Accordingly, by deducting 50% from the annual income of the deceased, the claimant's dependency is assessed at Rs.36,000/- per annum.

12. Looking to the age of the deceased and the claimant/appellant i.e. 55 & 58 years at the time of accident, we are of the opinion that the Tribunal has not rightly applied the multiplier in this case. In fact for the age group of 51 to 55 years, multiplier of 11 has to be applied not of 8 as per the Schedule. Therefore, the multiplier is enhanced from 8 to 11 and compensation is assessed to Rs.36,000/- x 11 = Rs. 3,96,000/-.

13. That apart, the Tribunal has not awarded any amount for loss of estate, loss of affection and the amount awarded under the conventional heads like funeral expenses & loss of consortium, is also on lower side. Thus, keeping in view all these things, this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The claimant/appellant is entitled for compensation in the following manner;-

Heads		Amount Enhanced
Loss of income	:	3,96,000/-
Loss of consortium	:	1,50,000/-
Loss of Estate	:	25,000/-
Loss of love & affection	:	50,000/-
Funeral Expenses	:	25,000/-
Total	:	**6,46,000/-**

14. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.6,46,000/- (3,96,000+2,50,000) for which the claimant is entitled to receive as compensation for the death of deceased Peen Bai. Since the Tribunal has already awarded Rs.87,000/-, after the deducting the same the claimant/appellant is entitled for enhanced amount of Rs.5,59,000/-. This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization.

15. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-

(P. Diwaker)
Judge

Sd/-

(RP Sharma)
Judge

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