

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1048 of 2013

1. Pramila, W/o Late Anil Patel, Aged About 30 Years, Caste Kurmi.
2. Ku. Sakshi Patel, D/o Late Shri Anil Patel, Aged About 11 Years.
3. Ku. Meenakshi, D/o Late Anil Patel, Aged About 9 Years.
4. Suryakant, S/o Late Shri Anil Patel, Aged About 4 Years.
5. Shashi, D/o Late Anil Patel Aged About 1 ½ Years.

Applicants No.2 to 5 are minor through their natural guardian mother Pramila, W/o Late Shri Anil Patel, aged about 30 years.

Applicants are residents of village Shivri, P.S. Chalgali, Tah. Wadrafnagar, Distt. Surguja C.G.

---- Appellants

Versus

1. Shivnath Prasad Jaiswal, S/o Ramprasad Jaiswal, R/o village Duppi, Tah. Rajpur, Distt. Surguja C.G.
2. Ratan Kumar S/o Bechan Ram, Occupation Driver, R/o village Karsi, P.S. And Tahsil Pratappur, Distt. Surguja C.G.
3. Ifco-Tokyo General Insurance Company Limited Raipur, Branch Office : 3rd Floor, 345-347 Lal Ganga Shopping Mall, G.E. Road, Raipur C.G.
4. The Oriental Insurance Company Limited, Branch Office Manendragarh Road, Near Ambedkar Chowk, Ambikapur, Distt. Surguja C.G.

---- Respondents

For appellants - No one appears.

For Respondents No.1, 2 and 3 – No one appears.

For Respondent No.4- Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

27/07/2017

1. No representation is made on behalf of the appellants despite repeated call. Considering the fact that instant appeal is for enhancement of the claim awarded, appeal is heard.
2. Instant appeal is against the award dated 27/08/2013 passed by the First Additional Claims Tribunal, Ambikapur in claim case no.184/2011 whereby an award of Rs.6,73,000/- has been awarded. The liability has been fastened on the respondent No.3 Ifco-Tokyo General Insurance

Company Limited, Raipur alongwith respondents No.1 and 2 who are owner and driver of the offending vehicle. There is no challenge to the liability fastened over the insurance company except quantum of award which is by the appellants.

3. As per the case of the appellants who are the wife and four children of deceased Anil Patel filed a claim petition with the averment that on 30/06/2011 Anil Patel was going in his motorcycle bearing No. C.G. 15 CF-4017 from Ambikapur to his resident village Shivri near Baki culvert Mahindra Tractor which was being driven in a rash and negligent manner by non-applicant No.2 Ratan Kumar and owned by non-applicant No.1 Shivnath Prasad Jaiswal dashed Anil Patel whereby he died on 1/07/2011. As per the averment at the time of incident deceased was aged about 35 years and was a driver working with one Naresh Agrawal and used to earn Rs.9000/- per month apart from the wages of Rs.150 per day. It was stated that the said tractor which caused accident was insured with non-applicant No.3 Ifco-Tokyo General Insurance Company Limited. On different heads Rs.28,61,000/- was claimed by the wife and four minor children and the tribunal has awarded amount of Rs.6,73,000/-.

4. Instant appeal is for enhancement of the award as no appeal has been filed against the finding with respect to the liability which is fastened on the insurance company as also to the fact that at the relevant time due to rash and negligent driving of the Mahindra Tractor 275 DI which was driven by Ratan Kumar in a rash and negligent manner had caused the accident.

5. In order to assess the quantum which has been awarded respective evidence of the claim was perused. Statement of the wife of deceased Anil Patel namely Smt. Pramila would show that with respect to the income it is stated that her husband was aged about 35 years at the time of incident

and was earning Rs.9000/- per month apart from the daily allowance of Rs.150/- per day was being paid to him. It was stated that she has four children all minor and they were completely dependant on her husband. In the cross-examination she has stated that at the time of incident her husband was driver of the truck of Naresh Agrawal and was getting Rs.9000/- per month apart from the daily wages of Rs.150/-. She has proved the driving licence as Ex.P-11. Perusal of Ex.P-11 would show that it is motor driving licence for heavy goods vehicle.

6. Further the statement of one Naresh Agrawal is perused. It is stated that the deceased was working as driver for his truck bearing No.CG 15 A-C-0842 and he was being paid Rs.10,000/- per month as salary apart from daily allowance of Rs.200/- per day. In the cross examination however it was admitted that no document to shown payment was filed.

7. Tribunal has assesed the income of the deceased to Rs.4500/- per month taking into Rs.150/- per day. As against this if statement of the wife of the deceased is seen, she has stated that her husband was getting Rs.9000/- per month as salary apart from daily allowance of Rs.150/- and was a driver for heavy goods vehicle. Driving licence has been proved as Ex.P-11. Same fact has been narrated by one Naresh Agrawal (AW-3) wherein it was stated that deceased was working however he has stated that he was being paid salary of Rs.10,000/- apart from the daily allowance of Rs.200/-. Taking into fact licence which has been proved by the wife as Ex.P-11 which shows that the deceased was holding driving licence for heavy goods vehicle it can be very well presumed coupled with the statement of wife and Naresh Agrawal that he was working as driver. Consequently, even the daily allowance if are ignored for driver income of Rs.7500/- per month taking into period of accident in the year 2011 can be reasonably assumed. Consequently, in view of the statement of the wife

and Naresh Agrawal and reading it with the document Ex.P-11, I deem it proper to assess income of the deceased to Rs.7500/- per month. Further considering the age of the deceased that he was stated to be below 40 years as would be evident from the statement of the wife as also the post mortem report Ex.P-4 which shows that the deceased was below 40 years. Consequently, 50% future prospect has to be added as per law laid down in case of **Rajesh & others Vs. Rajbir Singh & others** reported in **(2013) 9 SCC 54** thereby amount comes to Rs.7500/- + 3750/- = Rs.11250/-. Now coming to the deduction towards personal expenses. Claim petition was filed by the wife and four minor children, therefore deduction of ¼ has to be made as the dependants are more than 5. Thereby, monthly income comes to Rs.11250 – 2812 = Rs.8438/-. As the deceased was 35 years of age consequently as per law laid down in case of **Sarla Verma Vs. DTC (2009) 6 SCC 121** multiplier of 16 would be applicable. Thus, annual dependency comes to 8438x12x16=Rs.16,20,096/-. Court has not granted any amount to the children for loss of love and affection and only granted Rs.10,000/- for loss of consortium to the wife, for loss of estate Rs.10,000/- has been granted and for funeral expenses Rs.5000/- has been granted which in my considered opinion appears to be too meagre and requires to be enhanced. Consequently, Rs.1 lakh is granted to the wife for loss of consortium, Rs.50,000/- to each of the children i.e. appellants no.2 to 5 for loss of love and affection and Rs.25,000/- for funeral expenses. Therefore, total compensation is re-assessed as follows:-

S.No.	Heads	Calculation
(i)	Income of the deceased	Rs. 7500/- per month
(ii)	50% of (i) above to be added as future prospect	Rs.7500/- + 3750/- = Rs.11250/-
(iii)	After deducting 1/4th of (ii)	Rs.11250 – 2812 = Rs.8438/-.

	above towards personal expenses monthly dependency comes to	
(iv)	After applying multiplier of 16 annual dependency comes to	8438x12x16=Rs.16,20,096/-.
(v)	For loss of consortium to the wife	Rs.1,00,000/-
(vi)	For loss of love and affection to 4 minor children @ Rs.50,000/- each	Rs.2,00,000/-
(vii)	For funeral expenses	Rs.25,000/-
	Total	Rs.19,45,096/-

8. Thus, total compensation will be Rs.19,45,096/-. After deducting Rs.6,73,000/- awarded by the tribunal, the enhancement would be Rs.12,72,096/-. The said amount shall carry interest @ 6% per annum from the date of filing of the claim petition till date of realization.

9. In the result, appeal is partly allowed. Claimants would be entitled to receive Rs.12,72,096/- in addition to what is already awarded.

10. So far as it relates to apportionment, each of the minor children shall also get Rs.1 lakh each and remaining amount shall be distributed to the wife. Registry is further directed to communicate the quantum of enhancement to the claimants in Hindi Deonagari language which may be communicated through gram panchayat of the concerned village wherein appellants are presently residing. The legal aid committee of the area shall also ensure the payment of compensation to the appellants.

Sd/-
(Goutam Bhaduri)
JUDGE

