

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 387 of 2013

1. Dhana Ram Sahu, S/o Late Shri Hunsu Ram Sahu Aged About 50 Years.
2. Ku. Vimla D/o Shri Dhana Ram Sahu Aged About 23 Years
3. Ku. Ramhala Sahu D/o Shri Dhana Ram Sahu Aged About 21 Years
4. Ku. Simala D/o Dhana Ram Sahu Aged About 19 Years

All R/o Behind Kali Mandir, Laxman Nagar, P.S. Gudhiyari, Raipur, Distt.
Raipur C.G.

---- Appellants (Claimants)

Versus

1. Gurudev Singh, S/o Lal Singh Aged About 30 Years R/o Moulipara, P.S. Telibandha, Raipur C.G., R/o New Jeevan Bus Service, Bus Stand, Pandari, Raipur C.G. **Driver of Bus No.CG04-E-2006**
2. Aakash Deep Singh C/o Gurudev Singh, New Jeevan Bus Service, Bus Stand, Pandari, Raipur C.G. **Owner of Bus No.CG04-E-2006**
3. The Oriental Insurance Company Limited, through - Its Branch Manager, The Oriental Insurance Company Limited, Jail Road, Raipur, Tahsil & District Raipur C.G.

---- Respondents

For Appellants	:	Shri Yogesh Pandey, Advocate
For Respondent No1 & 2	:	None
For Respondent No.3	:	Shri Pankaj Agrawal, Advocate

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

Judgement

Per P. Diwaker, J

18/07/2017

1. This appeal filed by the claimants/appellants arises out of the award dated 10.1.2013 passed by the 1st Additional Motor Accident Claims Tribunal,

Raipur (henceforth 'the Tribunal') in Claim Case No.45/12 whereby in an death case compensation of Rs.3,15,000/- has been awarded to the claimants/appellants herein.

2. Facts of the case, in brief are that on 13.7.2011 deceased Surendra Kumar Sahu was coming to Raipur from Dhamtari on his motorcycle. He was driving his vehicle slowly. When he reached near Jaitkhamb, village Devpuri, the offending vehicle i.e. Bus bearing registration No.CG04-E-2006 being driven by respondent No.1 herein rashly and negligently, came from the opposite side and gave dash to his motorcycle as a result of which he received grievous injuries. He was immediately admitted in the hospital where he died while undergoing treatment. Report of the incident was lodged in the Police Station Tikrapara, Raipur. A claim case was filed by the claimants/appellants seeking compensation to the tune of Rs.15,83,000/- under various heads, *inter alia*, pleading that at the time of accident the deceased was earning Rs.8,000/- per month, they were dependent on him and on account of his untimely death a loss of income has occasioned to them, therefore, they are entitled to the compensation as claimed by them.
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 contested the claim case and denied its liability on the ground that the accident occurred due to rash and negligent driving of the appellant himself and there was breach of insurance policy also as the offending vehicle was being plied without any valid documents like driving license, permit, fitness certificate.
4. The Claims Tribunal by the impugned award has awarded a compensation of Rs.3,15,000/- to the appellants under various heads such as loss of

estate, loss of love & affection, loss of income and funeral expenses. It is this award which has been challenged by the appellants in this appeal.

5. Counsel for the appellant submits that;-

- the Claims Tribunal has erred in not accepting the claimants' evidence about the income of the deceased and in assessing his income at Rs.5,000/- per month.
- the sum awarded under the conventional heads are also on the lower side.
- the rate of interest awarded at the rate of 6% per annum from the date of application till payment is also very low and it requires upward revision and enhancement.

6. On the other hand, it has been argued on behalf of the counsel for respondent No.3 that the compensation awarded by the Claims Tribunal is just and proper and as such, the same is not required to be enhanced at all.

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

8. From the pleadings of the respective parties and the overall evidence 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. Evidence further goes to show that after being hit by the offending vehicle, Surendra Kumar Sahu was taken to the hospital where he succumbed to his injuries. True, the claimants/appellants pleaded that deceased used to earn Rs.8,000/- per month by working as Bus Driver, no cogent and reliable evidence was led before the Tribunal to establish the income of the deceased to the extent of Rs.8,000/- per month. Therefore, we do not find any fault in the approach of the Tribunal

in discarding the appellants' evidence about the income of the deceased. Nevertheless, the income of the deceased assessed by the Tribunal at Rs.5,000/- per month in the year 2011 is certainly on the lower side and requires reconsideration. Likewise, the amount awarded under the conventional heads also appears to be inadequate and requires suitable enhancement in this appeal.

9. Accordingly, the monthly income of the deceased is taken to be Rs.6,000/- which makes the annual income as Rs.72,000/- and likewise, looking to the age of the deceased at that time of accident i.e. 28 years, loss of future income can be assessed to be 50% of the total income which comes to Rs.36,000/- per annum and after deducting 50% towards his personal expenses, the annual loss of dependency would come to Rs.54,000/- ($72000 + 36000 / 50$).
10. Considering the age of the deceased, we are of the opinion that the Tribunal has not correctly applied the multiplier. In fact, for the age group of 25 to 30 years, multiplier of 17 has to be applied not of 10 as per the Schedule. Therefore, the multiplier is enhanced from 10 to 17 and after applying multiplier of 17, the total loss of dependency is assessed at Rs.9,18,000/- (54000×17). Besides this, the appellants are also entitled for a sum of Rs.1,00,000/- towards loss of consortium; Rs.50,000/- for love & affection; Rs.25,000/- for loss of estate and Rs.25,000/- for funeral expenses. The appellants-claimants, thus, become entitled to receive a total sum of Rs.11,18,000/- ($9,18,000 + 2,00,000$) as compensation for the death of deceased Surendra Kumar Sahu in the motor accident. Since the Claims Tribunal has already awarded Rs.3,15,000/-, after deducting the said amount the claimant/appellants are entitled for enhanced amount of Rs.8,03,000/- ($11,18,000 - 3,15,000$). This additional amount of

compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization.

11. 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

roshan