NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 224 of 2017

1. Piyush S/o Late Khemji Khobrangde, Aged About 22 Years
2. Nakul S/o Late Khemji Khobrangde, Aged About 21 Years
   Both R/o Balco, Tahsil And District Korba, Chhattisgarh.

---- Appellants

Versus

1. Sunil Singh Parihar S/o A.K.Singh Parihar, R/o Village Ghuddewa Colony, Bankimongra, Tahsil Katghora, District Korba, Chhattisgarh .... (Driver Of Offending Vehicle Truck Bearing Registration No. C.G.12 C 2939)
2. Vimlesh Singh Verma S/o Devnarayan Sharma, Aged About 45 Years R/o Village In Front Of Petrol Pump, Bankimongra, Tahsil Katghora, District Korba, Chhattisgarh ....(Owner Of Offending Vehicle Truck Bearing Registration No. C.G.12 C 2939).
3. The Oriental Insurance Company Ltd. Through Branch Manager, The Oriental Insurance Company Ltd. Division Office Geetanjali Bhawan, Main Road, Korba, Chhattisgarh ....(Insurer Of Offending Vehicle Truck Bearing Registration No. C.G.12 C 2939).

---- Respondents

For Appellant	:	Ms. Nandkumari Kashyap, Advocate.
For respondents No.3	:	Shri H.P Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

18/07/2017

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation against the award dated 28.09.2016 passed by the Additional Motor Accident Claims Tribunal, Katghora, Distt. Korba (in short, the Tribunal) in Claim Case No.24/2012.
2. The brief facts relevant for adjudication is that the father of the claimants Khemji Khobrangde on 17.05.2011 while he was going on his motorcycle was dashed by a Truck coming from opposite

direction bearing registration No.CG-12-C-2931 owned by the respondent No.2, driven by respondent No.1 and insured with the respondent No.3. As a result of the said accident, Khajuri Khobragade died on the spot. Criminal case was registered against the respondent No.1-driver of Truck, at Police Station Darri, Distt. Korba for the offence under Sections 279 and 304-A IPC.

3. The claimants have preferred claim application under Section 166 of the Motor Vehicles Act (for shot, MV Act) seeking for compensation on account of death of their father in the alleged accident. The Tribunal, vide impugned award, considering the evidence and pleadings, ordered for payment of compensation of Rs.25,95,000/- payable by the respondent No.3-insurance company. The break-up of the said amount is as under :

For loss of income	-Rs.25,20,000/-
For loss of love and affection	-Rs.30,000/-
For transportation of body of deceased	-Rs.10,000/-
For funeral expenses	-Rs.25,000/-
Total compensation	-Rs.25,95,000/-

It is this award which is under challenge before this High Court.

4. The ground which has been raised by the appellants is that, the Tribunal has not taken into consideration the future prospects for the purpose of quantifying the compensation. The deceased on the date of accident was aged around 55 years and that he was working at Balco. There was about 5 years of service left for the deceased to superannuate. The deceased was keeping a good health and there was all likelihood of the deceased to have even gone for further employment even after retirement from the present place of working.

Therefore, the Tribunal should have taken in to consideration the future prospects also while quantifying the compensation and prayed for compensation amount to be suitably enhanced and the amount awarded by the Tribunal be modified accordingly. He further submits that the compensation awarded under other heads also are on the lower side and deserves enhancement.

5. Counsel for the respondent-insurance company, however, opposes the appeal and claim for compensation under future prospects. The contention of respondent is that the judicial precedent as is laid down by the Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr., 2009 (6)SCC 121, disallows the claim for future prospects while quantifying the compensation in the event if the deceased is more than 50 years of age. He stressed hard on this issue that deceased since was more than 55 years of age, there was no likelihood of any substantial growth in his income. Therefore, the award of compensation without adding the component of future prospects cannot be said to be illegal or contrary and thus prayed for rejection of the appeal.

6. He relied upon the decision of Supreme Court in case of Bhogireddy Varalakshmi Vs. Mani Muthupandi and Ors., 2017(3)SCC-802 where the Supreme Court taking into consideration the judgments in case of Rajesh & Ors. Vs. Rajbir Singh & Ors, 2013(9)SCC 54 and also Reshma Kumari Vs. Madan Mohan, 2013(9)SCC 65 have ordered for placing the said issue so far as grant of compensation under the head loss of future prospects in respect of death of deceased aged

more than 50 years before the Larger Bench.

7. Having heard the rival contentions put forth on either side and on perusal of records, the undisputed facts of the case are the accident that took place, the date of accident, the offending vehicle belonging to the respondent No.2, the vehicle being insured with the respondent No.3 and the deceased being an employee of Balco. On the basis of the aforesaid admitted factual position, what now is to be seen is whether the compensation awarded by the Tribunal was just and equitable or not and whether the Tribunal has erred in not taking the component of future prospects for the purpose of quantifying the compensation.

8. True it is that in the judgment of Sarla Verma (Supra) has laid down the condition that in the event of the deceased being more than 50 years of age, the component of future prospects would not be taken into consideration for determination of the compensation. However, the said proposition seems to have been diluted now and in one of the recent decision in case of Rajesh (Supra) in paragraphs 9 and 11 has held as under :

> "9. In Sarla Verma case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self employed or on fixed wages, where there is normally no age of superannuation, we are of the view that, it will only be just an equitable to provide an addition of 15 percent in the case where the victim is between the age group of 50-60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.
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> 11. Underlying principle discussed in the above decision is with regard to the duty of the court to fix a just compensation and it has now become settled law that

> the court should not succumb to niceties or technicalities, in such matters. Attempt of the court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependents should not face the vagaries of life on account of the discontinuance of the income earned by the victim."

9. The aforesaid observations of the Supreme Court was after due consideration of what was laid down by the Supreme Court in case of Sarla Verma (Supra). The Supreme court while making the aforesaid observations has also kept in mind the decision in case of Santosh Devi Vs. National Insurance Co.Ltd. & Ors, 2012 (6) SCC 421. Since, both the judgments of Rajesh (Supra) and Reshma (Supra) are decided by a corum consisting the same strength of Judges i.e. 3 Judges, taking a liberal view and considering the fact that Act itself is a beneficial legislation, this court is inclined to as of now follow the ratio laid down in case of Rajesh (Supra).

10. In view of the aforesaid authoritative decisions of the Supreme Court and keeping in view the judgment of Rajesh (Supra), this court is of the opinion that the Tribunal ought to have taken into consideration the component of future prospects while quantifying the compensation. Thus, this court holds that the appeal of the appellants deserves to be and is accordingly allowed to the extent that the award of the Tribunal is liable to be modified and the compensation payable to the claimants under the head of loss of income is to be quantified by adding 10 percent of monthly income towards future prospects. 10 percent for the reason that it was only five years odd service left for the deceased to superannuate.

11. Thus, taking Rs.35,000/-as monthly wages of the deceased as assessed by the Tribunal and adding 10 percent of it towards future prospect, the amount would become Rs.38,500/-. If the said amount is multiplied with 12, the annual income reaches to Rs. 4,62,000/-. If 1/3rd of it is deducted towards personal expenses of deceased, the figure would come to Rs.3,08,000/-. After applying the multiplier of 9 as has been applied by the Tribunal, the amount comes to Rs.27,72,000/-. It is ordered accordingly.
12. Thus, the claimants shall be entitled for a compensation of Rs.27,72,000/-under the head of loss of income instead of Rs.25,20,000/- as awarded by the Tribunal. The appellants shall be entitled for additional enhanced amount of compensation of Rs.2,52,000/- in addition to what has been awarded by the Tribunal.
13. So far as compensation under other heads are concerned, this court is of the opinion that the amount of Rs.30,000//- awarded by the Tribunal for loss of love and affection is definitely on the lower side taking into consideration the fact that the claimants are infact two young children aged in their early 20's and at this stage of their life they have lost their father, the bread earner and source of income of the family. Therefore, applying the principle laid down in Rajesh (Supra), the said amount under the head of loss of love and affection is enhanced to consolidated sum of Rs.1,00,000/- instead of Rs.30,000/-. Thus, under this head, the claimants are entitled for an additional amount of Rs.70,000/- in addition to what has been awarded.

14. Likewise, the record and the evidence which has been adduced before the Tribunal shows that the vehicle which was being driven by the deceased at the time of accident when received expenditure of Rs.18,290/-, against which the Tribunal has awarded compensation of only Rs.10,000/-. The said document of service centre was exhibited before the Tribunal as Ex. P/7. The Tribunal has not given any explanation for grant of only Rs.10,000/-. Therefore, the said amount of Rs.10,000/-as awarded by the Tribunal is also ordered to be enhanced to Rs.18,290/-.
15. Thus, the appeal is allowed. The claimants are entitled for aforementioned enhanced amount i.e. Rs.3,30,290/- in addition to what has already been awarded. The above enhanced amount i.e. Rs.3,30,290/- shall carry interest at the same rate that has been ordered by the Tribunal. Rest of the conditions mentioned in the award shall remain intact.
16. The respondent No.3-insurance company is granted two months time to deposit the enhanced amount of compensation before the concerned claims Tribunal.

Sd/-
(P. Sam Koshy)
Judge

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