NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 402 of 2017

1. Smt. Meera Bai Sahu W/o Late Suman Kumar Sahu, Aged About 33 Years
2. Kumari Hemlata Sahu D/o Late Suman Kumar Sahu, Aged About 17 Years
3. Kumari Jagriti Sahu D/o Late Suman Kumar Sahu, Aged About 15 Years
4. Dinesh Kumar Sahu S/o Late Suman Kumar Sahu, Aged About 13 Years
5. Smt. Krishna Bai W/o Bhuwan Lal Sahu, Aged About 58 Years
6. Bhuwan Lal Sahu S/o Late Pitamber Sahu, Aged About 62 Years
   Appellants No.2 to 4 are Minor Through Legal Guardian Mother Smt. Meera Sahu W/o Late Suman Kumar Sahu,
   All R/o Mahamayapara Aarang Tahsil Aarang Distt. Raipur, Chhattisgarh

---- Appellants

Versus

1. Baldev Prasad Upadhayay S/o Rudra Prasad Upadhyay, Aged About 50 Years Occupation Driver, R/o Village- Chhota Ashok Nagar Gudhiyari Thana And Post Gudhiyari, District Raipur, Chhattisgarh ....(Driver Of The Offending Vehicle Truck Trelar No. C.G.04 J.C.2739)
2. Praween Gupta S/o P.K.Gupta, Aged About 60 Years R/o Village Paterapali, Transport Nager Raigarh, Presently Address- Tirupati Transport Tatibandh Thana Amanka Distt. Raipur, Chhattisgarh ....(Owner Of The Offending Vehicle Truck Trelar No. C.G.04 J.C.2739)
3. Oriental Insurance Company Limited, Through Divisional Manager Divisional Office-1 Kachehari Chowk Jel Road Raipur Distt. Raipur, Chhattisgarh ....(Insurer Of The Offending Vehicle Truck Trelar No. C.G.04 J.C.2739).

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For Respondents 1&2	:	Shri AP Sharma, Advocate.
For respondent No.3	:	Shri HB Agrawal, Sr. Advocate along with Smt. Prabha Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

06/07/2017

1. The present appeal has been filed against the award dated 29.09.2016

passed by the 5th Additional Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.559 of 2015. Vide the said award, the Tribunal has awarded compensation of Rs.8,17,100/-to the claimants on account of death of deceased Suman Kumar Sahu, aged about 40 years, who met with an accidental death on 15.07.2015.

2. Learned counsel for the appellants submits that the quantum of compensation awarded by the Tribunal is not justified and sufficient. He submits that the deceased was running a Kirana Shop at Raipur and that his monthly income has been claimed at Rs.18,000/- but the Tribunal has taken his monthly income as Rs.4000/- only. The said calculation of compensation by taking into account Rs.4000/- as monthly income of the deceased was highly disproportionate and not justified as the same is much less than even a daily wage worker who would earn more than Rs.200/- a day in July, 2015, and therefore prays that award needs enhancement on this ground alone. Further, the award needs interference on the ground that the personal expenses which have been deducted is that of 1/4th whereas, it should had been 1/5th taking into consideration the ratio laid down by the Supreme Court in case of Sarla Verma & Others Vs. Delhi Transport Corporation and Another, 2009 (6) SCC 121, more particularly for the reason that six persons were dependent upon the deceased. Likewise, the award on the other heads is also not proper. The Tribunal ought to have awarded under the head of love and affection and also for loss of estate to each of the claimants.

3. The insurance company however opposes the same and submits that the award does not warrant interference as the same appears to be fair and reasonable and have taken into consideration the entire facts and circumstances of the case while calculating the compensation.

4. Having heard the rival contentions put forth on either side and on perusal of records, what clearly reflects is the fact that the date of accident was 15.07.2015. It is any body's guess that in the month of July, 2015, a labour going on daily work would have got somewhere around Rs. 200/- per day which would be Rs.6000/- in a month. Since the deceased was running a Kirana shop, obviously his income would also had been in any case more than Rs.200/- a day. Therefore, the Tribunal has definitely erred in assessing the income of deceased on the lower side. The Tribunal ought to have taken in to consideration the minimum monthly income of the deceased as Rs.6000/- and not Rs.4000/- for the purpose of computing the compensation.

5. In this view of the matter, this court is of the opinion that the amount awarded under the head f loss of income warrants interference. The same deserves to be and is accordingly modified and enhanced and the amount of compensation has to be calculated by assessing the income of the deceased as Rs.6000/- in place of Rs.4000/- per month i.e. annual income of Rs.72,000/-. By adding 30 percent of it towards future prospects, total income comes to Rs.93,600/-.

6. Further, the Tribunal has also erred in deducting 1/4th of annual income towards personal expenses of the deceased. As per Sarla Verma's case where the number of dependents family members are 4 to 6, the personal expenses can be deducted to the extent of 1/5th. For ready reference, para 30 of said judgment is reproduced as under :

> "30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that

> where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceed six."

7. After deducting 1/5th of annual income of the deceased from Rs.93,600/- towards his personal expenses, the claimant's annual dependency would be Rs.74,880/-. By multiplying the claimant's annual dependency of Rs. 74,880/- with the multiplier of 14 as applied by the Tribunal, the amount of compensation under the head of loss of income and dependency would be Rs. 10,48,320/-. Likewise, this court also finds that compensation paid to the claimants on the other heads also is on the lower side considering the total number of dependents family members particularly the fact that there were six dependents in the family. Therefore, this court is of the opinion that a lump sum compensation of Rs.2,00,000/- under different conventional and non conventional heads would be justified instead of Rs. 80000/- as awarded by the Tribunal. Thus, the claimants would become entitle for a total compensation of Rs. 12,48,320/- as compensation in place of Rs. 8,17,100/- as awarded by the Tribunal.
8. In view of foregoing, the appeal is allowed in part. The compensation of Rs. 8,17,100./- is enhanced to Rs. 12,46,920/- i.e. Rs.4,31,220/- over and above the amount awarded by the Tribunal. The above enhanced amount of compensation of Rs.4,31,320/- shall carry interest @ 6 percent per annum from the date of application till its actual payment. Rest of the conditions mentioned in the award shall remain intact. The award stands modified to the above extent.

9. The respondent/Oriental Insurance Company Ltd. is granted two months' time to deposit the enhanced amount of compensation of Rs. 4,31,320/- along with interest before the concerned Tribunal. No order asto costs.

Sd/-
(P. Sam Koshy)
Judge

inder