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HIGH COURT of CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 385 of 2017

1. Smt. Priti Shinde Wd/o late Naveen Shinde, aged about 25 years, R/o Marathapara, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh
2. Ku. Shriti Shinde D/o late Naveen Shinde, aged about 5 years, minor through natural guardian mother Smt. Priti Shinde, W/o Naveen Shinde, R/o Marathapara, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh
3. Rudra Pratap Shinde S/o Late Naveen Shinde, aged about 3 years, minor through natural guardian mother Smt. Priti Shinde, W/o Naveen Shinde, R/o Marathapara, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh
4. Smt. Vijay Laxmi Shinde W/o Krishna Kumar Shinde, aged about 60 years, R/o Marathapara, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh
5. Krishna Kumar Shinde S/o Late Shanker Rao Shinde, aged about 61 years, R/o Marathapara, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh ....(Claimants)

---- Appellants

Versus

1. Hori @ Hari Dalai S/o Damru Dalai, aged about 22 years, R/o Village Girli Guma, Police Station Dasmantpur, District Koraput (Orissa) ....(Driver of the offending truck bearing registration no. C.G.10-C-0171)
2. Abdul Ibrahim S/o Abdul Sakur, aged about 42 years, R/o Kumharpara, Jagdalpur, District Bastar, Chhattisgarh .... (Owner of the offending truck bearing registration no. C.G.10-C-0171)
3. Divisional Manager, Cholamandalam Insurance Company Limited, 2nd Floor, Simran Tower, behind L I C Bhawan, Pandri, Raipur, District Raipur, Chhattisgarh ………(Insurer of the offending truck bearing registration no. C.G.10-C-0171)

---- Respondents

For Appellants	:	Shri Anil Gulati, Advocate
For respondent no.3	:	Shri Rohitashva Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/07/2017

Challenge in the present appeal is the award dated 21.11.2016 passed by the Additional Motor Accident Claims Tribunal (FTC), Dhamtari (CG) in Claim Case No.126/2015. Vide the impugned award the Claims Tribunal has granted compensation to the tune of Rs. 20,44,700/- to the claimants on account of the death of Naveen Shinde.

2. Counsel for the claimants, at the outset, restricts his claim seeking enhancement on two grounds; firstly the Tribunal has not taken into account the future prospects of the deceased while calculating the compensation. Secondly, the amount of compensation paid under the other heads like loss of estate and funeral expenses etc. is also substantially low. Hence, the award needs to be modified/altered to that extent.

3. The facts of the case in nutshell are that on 13.05.2015 the deceased Naveen Kumar Shinde was traveling in his car from Dhamtari to Purur accompanied by his friend Amit Kaur. When the vehicle of the deceased reached near Chitoud Basti, a truck bearing registration no. CG 10C 0171, coming from the opposite direction driven by respondent no.1 and owned by respondent no.2 dashed against the vehicle of the deceased as a result of which Naveen Shinde and his friend Amit both died on the spot. The matter was immediately reported to the Police Station Gurur and the offending truck belonging to respondent no.2 was taken into custody and a case was registered against respondent no.1 in Crime No.554 of 2015 for the offence under Section 304A of IPC.

4. The deceased in the instant case was a self employed man and he was carrying on the business of transportation. He was an Income Tax payee and as per the last income tax return that he had submitted, his annual income was Rs.1,78,640/-.

5. Taking the annual income of the deceased to be Rs.1,78,640/-, the Tribunal deducted ¼ of the said amount for personal expenses and took the remaining amount of Rs.1,33,980/- to be the income for the purpose of calculating compensation. Since the deceased at the time of death was between 36 to 40 years, the multiplier of 15 was applied and the compensation of Rs.20,09,700 was computed. In addition, an amount of Rs.25,000/- towards loss of estate and Rs.10,000/- as funeral expenses was also awarded. Thus, the Tribunal vide its order dated 21.11.2016 awarded total amount of Rs.20,40,700/- as compensation to the claimants.

6. It is this award which is under challenge in the present appeal.

7. The sole contention of the counsel for appellants is that the Tribunal has not considered the future prospects and the rise in income for the purpose of calculating compensation. Likewise, the compensation under the other heads is also on the lower side and therefore, prayed that on these two counts, the impugned award may kingly be modified/altered suitably.

8. Counsel appearing for respondent no.3 however opposes the appeal on the ground that there is no scope of interference with the impugned award for the reason that the Tribunal has already awarded a huge amount of compensation to the claimants and therefore, the impugned award does not warrant any interference. He further submits that even otherwise the deceased was a self employed man and his income would not have been constant and therefore, the claimants would not be entitled for compensation under the head of future prospects.

9. Having considered the rival contention put forth by the parties it would be trite at this juncture to refer to the judgment of the Hon'ble Supreme Court in the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54** wherein it has been held that even in a case of self employed person or he does not have a fixed wages or income, the actual income of the deceased must be enhanced for the purpose of computation by 50% where his age is below 40 years.

10. In view of the authoritative decision of the Supreme Court, this Court has no hesitation in holding that the non-granting of compensation under future prospects is not proper and the impugned award therefore deserves to be enhanced accordingly. Thus, there must be an addition of 50% to the actual income of the deceased while computing future prospects which comes to Rs.10,04,850/-. So far as the compensation under other heads like loss of estate, funeral expenses and love and affection is concerned, considering the fact that there are five claimants inclusive of wife, father, mother and two children of the deceased, this Court is of the opinion that the consolidated amount of Rs.1,00,000/- would be justified.

11. In view of the same, the impugned award stands modified to the extent that the appellant shall be entitled for compensation under the head of loss of income to the tune of Rs.30,14,550/- of which the Court below has already awarded Rs.20,09,700/-. Thus, the claimants shall be entitled for the balance amount of Rs.10,04,850/-. In addition, the claimants shall also be entitled for compensation of Rs.1,00,000/- under the other heads of which the Tribunal has already awarded Rs.35,000/-. Thus, they would be entitled for the balance amount of Rs.65,000/-.

12. Accordingly, the respondent Insurance Company is directed to deposit the difference of compensation in the light of the order of this Court to the tune of Rs.10,69,850/- with interest at the rate as awarded by the Tribunal within a period of two months from the date of receipt of the certified copy of this order. The other directions and reliefs which have been granted by the Tribunal shall remain intact.

13. With the aforesaid modification to the impugned award, the appeal stands allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola