NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 393 of 2017

1. Kanhaiyia Lal Gond S/o Late Hanumant Gond, Aged About 50 Years
2. Smt. Manki Devi W/o Kanhaiya Gond, Aged About 46 Years
   Both R/o Vrindanagar, Ward No.19, Camp-1, Bhilai, P.S. Chhawani, District Durg, Chhattisgarh ....(Claimants).

---- Appellants

Versus

1. Sarang Suryavanshi S/o Prakash Singh, Aged About 29 Years R/o Near Geeta Bhawan, Pacharipara, Durg, Tahsil And District Durg, Chhattisgarh ....(Driver Of Bus No. C.G.07, E-2712).
2. Sheetal Suryavanshi S/o Suryavanshi, R/o Near Geeta Bhawan, Pacharipara, Durg, Tahsil And District Durg, Chhattisgarh ....(Owner Of Bus No. C.G.07, E-2712).
3. The Oriental Insurance Company Limited, Branch Office, Near Rajendra Park, G.E. Road, Durg, Tahsil and District Durg, Chhattisgarh .... (Insurance of Bus No. C.G.07, E-2712).

---- Respondents

For Appellants	:	Shri Mazid Ali, Advocate.
For Respondent No.3	:	Shri RN Pusty, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

05/07/2017

1. The present appeal has been filed against the award dated 01.12.2016 passed by the 7th Additional Motor Accident Claims Tribunal, Durg (in short, the Tribunal) in Claim Case No.02 of 2016. Vide the said award, the Tribunal has awarded compensation of Rs.8,90,000/-to the claimants holding the driver, owner and insurer of the vehicle jointly and severally liable for payment of the compensation.
2. Learned counsel for the appellants at the outset fairly submits that he

would confine his challenge to the extent of salary not being properly taken into consideration by the Tribunal while calculating the compensation. He submits that he has proved his salary of Rs.10,000/- per month by leading evidence and the employer was also examined and certificate of salary was also produced before the Tribunal, yet the court below did not accept the same and have calculated the compensation by assuming his salary as Rs.5000/- per month. He submits that the said calculation of Rs.5000/- is erroneous for the reason that on the date of accident i.e. on 22.11.2014 a daily wage employee were getting more than Rs. 200/- per day. In the instant case the deceased was auto driver and was being paid Rs.10,000/- per month salary by the auto owner. Therefore, the amount of award deserves to be modified to the above extent.

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 considered the rival contentions put forth on either side and on perusal of records, the accident, death of deceased and non challenge to the finding that the deceased was a auto driver is not in dispute. The only thing to assess is what would be the average income of the deceased on the date of accident i.e. 22.11.2014. It is any body's guess that in the month of November, 2014, a person who would be engaged as Auto driver would have got somewhere around Rs. 250-300 per day i.e. Rs.7500-9000/- per month. Therefore, the

Tribunal ought to have taken in to consideration the minimum monthly income of the deceased at Rs.7500/- and not Rs.5000/- for the purpose of computing the compensation.

5. In this view of the matter, this court is of the opinion that the amount awarded warrant interference to the extent that the calculation made by the Tribunal under all other heads is proper and just, except the fact that monthly wages should have been Rs.7500/- in place of Rs.5000/-. Therefore, I propose to re-compute the amount of compensation under loss of income by assessing the income at Rs.7500/- in place of Rs.5000/- per month i.e. annual income of Rs.90,000/-.

6. After deducting 50 percent of annual income (i.e. Rs.90,000/-) of the deceased towards his personal expenses, the claimant's annual dependency would be Rs. 45,000/-. By multiplying Rs. 45,000/- with the multiplier of 17 as applied by the Tribunal, the amount of compensation under the head of loss of income and dependency would be Rs. 7,65,000/-. The claimants are further entitled for compensation of additional 50 percent under future prospects and rise in income of the deceased i.e. half of Rs.7,65,000/- which comes to Rs.3,82,500/-. Thus, the claimants would become entitle for Rs. 11,47,500/- as compensation in place of Rs. 8,90,000/- as awarded by the Tribunal.

7. In view of foregoing, the appeal is allowed in part. The compensation of Rs. 8,90,000./- is enhanced to Rs. 11,47,500/- i.e. Rs. 2,57,500/- over and above the amount awarded by the Tribunal. The above

enhanced amount of compensation of Rs.2,57,500/- 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.

8. The respondent/Oriental Insurance Company Ltd. is granted two months' time to deposit the enhanced amount of compensation of Rs. 2,57,500/- along with interest before the concerned Tribunal. No order asto costs.

Sd/-
(P. Sam Koshy)
Judge

inder