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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 406 OF 2017

1. Khairun Bibi, W/o Asmoddin Shekh, aged about 40 years, R/o Village Sangrahekhurd, P.S. & District Gadhwa (Jharkhand), present R/o Shrigarh, P.S. & Tahsil Ambikapur, District Surguja (C.G.)
2. Asmoddin Shekh, S/o Majeed Shekh, aged about 45 years, R/o Village Sangrahekhurd, P.S. & District Gadhwa (Jharkhand), present R/o Shrigarh, P.S. & Tahsil Ambikapur, District Surguja (C.G.)

… Appellants

Versus

1. Imtiyaz Ansari, S/o Alimuddip Ansari, aged about 30 years, R/o Village Kalyanpur, P.S. Gadhwa, District Gadhwa (Jharkhand), present R/o Bouripara, P.S. & Tahsil Ambikapur, District Surguja (C.G.)
2. Mo. Abdul Kameel Siddiqui, S/o Abdul Vadud Siddiqui, aged about 36 years, R/o Rasulpur, Ambikapur, P.S. & Tahsil Ambikapur, District Surguja (C.G.)
3. Branch Manager, Chola Mandalam M.S. General Insurance Company Limited, Divisional Office, 2nd Floor, Simran Tower, in front of L.I.C. Building, Raipur, District Raipur (C.G.)

… Respondents

For Appellants	:	Mr. C.J.K. Rao, Advocate.
For Respondent No.2	:	Mr. Awadh Tripathi, Advocate.
For Respondent No.3	:	Mr. Ghanshyam Patel, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/07/2017

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the Appellants-Claimants seeking for enhancement of the compensation awarded by the Third Additional Motor Accidents Tribunal, Ambikapur, Surguja, on 10.1.2017 in A.M.A.C.T. No. 106 of 2016.

2. Vide the impugned award, the Claims Tribunal has awarded an amount of Rs. 3,39,000/- as compensation with interest at the rate of 6% per annum, in favour of the Appellants-Claimants on account of accidental death of their son Meraj Ansari that took place on 28.11.2015.

3. Facts of the case in brief are that the deceased Meraj Ansari was travelling as a Khalasi on a Trailer, bearing Registration No. CG15-AC/4381, and was moving from Parsa Coal Mine to Ramanujnagar

Railway Siding. While returning, the Trailer in which the deceased was travelling got dashed with another Trailer, bearing Registration No. CG15-AC/4155, owned by Respondent No.2 and driven by Respondent No.1. On account of the said accident, the said Meraj Ansari received grievous injuries and he succumbed to the injuries sustained by him, on the spot itself.

4. The Appellants-Claimants being the parents of the deceased Meraj Ansari moved a claim application under Section 166 of the Motor Vehicles Act before the Claims Tribunal, claiming for a total compensation of Rs.16,34,000/- on account of the death of their son Meraj Ansari in the said accident.

5. After the pleadings were complete and the evidence were recorded, the Claims Tribunal finally vide the impugned award dated 10.1.2017, allowed the claim application of the Appellants-Claimants and granted an amount of Rs. 3,24,000/- under the heads of loss of income and dependency and Rs.5000-5000/- each for loss of consortium and Rs.5000/- for funeral expenses. Thus, in total, Rs.3,39,000/- has been awarded by the Claims Tribunal as compensation in favour of the Appellants-Claimants with interest thereon at the rate of 6% per annum from the date of the filing of the claim application till its realization, fastening the liability to the pay the amount of compensation jointly and severally upon the Respondents being the driver, owner and insurer respectively of the offending Trailer.

6. It is this award which has been challenged by the Appellants-Claimants in the present appeal, seeking for enhancement of the compensation awarded by the Claims Tribunal.

7. Learned Counsel for the Appellants-Claimants submits that the income of the deceased which has been quantified by the Claims Tribunal for calculating the compensation is highly disproportionate and is on the lower side and therefore the same deserves to be interfered/modified suitably. He further submits that even the compensation awarded under the other heads is extremely on the lower side and which also deserves to be enhanced. He thus prayed for that the impugned award needs interference and modification accordingly.

8. Learned Counsel for Respondent No.3-Insurance Company however opposing the appeal submits that a perusal of the impugned award would show that the compensation awarded is fair and reasonable and the same does not warrant any interference. He further submits that the Appellants-Claimants have failed to prove the source of income, monthly income and the proof in respect of the income of the deceased and therefore the claim of the Appellants-Claimants cannot be considered for enhancement. He thus prayed for the rejection of the appeal.

9. Having considered the rival contentions put forth on behalf of either side and on perusal of the record, what is necessary to be considered is the fact that the date of accident in the instant case is of November, 2015. So far as the employment of the deceased, his accidental death and the involvement of the offending vehicle in the accident are concerned, all these stand admitted and fully established.

10. The only aspect which has to be considered is, whether the income which has been taken into consideration for grant of compensation as also the compensation granted under other heads, are reasonable or not.

11. If we look into the pleadings which have come on record, the admitted facts remain that the deceased at the relevant point of time was working as a Khalasi. If we take into account the minimum wages that were applicable to even a labourer in November, 2015, the same would be more than Rs.200/- a day. If that be so, the minimum monthly income of the deceased would be somewhere around Rs.6000/- per month. In the instant case, true it is that the income part has not been properly established by the claimants. But, in any case, taking into consideration the age of the deceased at the time of accident, it could safely be inferred that he would have been earning a minimum of Rs.150/- a day and which would come to Rs.4500/- a month. Thus, the calculation of compensation taking the income to be Rs.3000/- per month is definitely on the lower side and deserves to be modified.

12. In the opinion of this Court, the calculation ought to had been at least with Rs.4500/- a month and thus the impugned award deserves to be modified under this head alone. Accordingly, if we take into consideration the income of the deceased to be Rs.4500/- a month then the calculation of compensation would be Rs.54,000/- per annum. If 50% of the said amount is deducted towards personal expenses, the amount would be Rs.27,000/-. which after applying the multiplier of 18 would come to Rs.4,86,000/-. This would be the compensation which the claimants would be entitled for under the heads of loss of income and dependency. The impugned award stands modified accordingly and it is held that the claimants would be entitled for compensation of Rs. 4,86,000/- towards loss of income and dependency, instead of Rs. 3,24,000/- as awarded by the Claims Tribunal.

13. Similarly, if we take into consideration the decisions which have been rendered by the Hon'ble Supreme Court in the recent past starting from the judgment in the case of **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and Another** [2009 (6) SCC 121] and others, the compensation granted under the other conventional heads are on the lower side and the same also deserves to be enhanced. Accordingly, in the opinion of this Court, the compensation awarded towards the conventional heads is liable to be enhanced to the extent of a lump sump amount of Rs.1,25,000/-, instead of Rs.15,000/- as has been awarded by the Claims Tribunal.

14. Thus, the total compensation payable to the claimants would be Rs.6,11,000/- against the total award of Rs.3,39,000/- awarded by the Claims Tribunal and the claimants are entitled for a difference amount of Rs.2,72,000/- as compensation which is to be paid by the Respondents jointly and severally.

15. As a consequence, the appeal is allowed and the impugned award is modified and enhanced to the extent that the Appellants-Claimants shall be entitled for an enhanced amount of compensation of Rs.2,72,000/- in addition to the compensation of Rs.3,39,000/- already awarded by the Claims Tribunal. The Respondents shall pay the said enhanced amount of compensation of Rs.2,72,000/- to the Appellants-Claimants within a period of two months from the date of receipt of certified copy of this order. All the other directions and conditions including that of interest, as awarded by the Claims Tribunal, shall remain intact.

Sd/-
(P. Sam Koshy)
Judge

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