

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 404 OF 2017

1. Ram Prabhakar Mishra, S/o Late Dharmanayaran Mishra, aged about 41 years, R/o Mother Teresa Ward, near Shiv Mandir, Tahsil Jagdalpur, P.S. Bodhghat, District Bastar (C.G.)
2. Smt. Archana Mishra, W/o Ram Prabhakar Mishra, aged about 38 years, R/o Mother Teresa Ward, near Shiv Mandir, Tahsil Jagdalpur, P.S. Bodhghat, District Bastar (C.G.)

... Appellants

Versus

1. Kashmira Singh, S/o Deewan Singh, aged about 58 years, R/o Housing Board Colony, P.S. Bodhghat, District Bastar (C.G.)
2. The Branch Manager, Shri Ram General Insurance Co. Ltd., Plot No.1, Fourth Floor, near Bharati Heights Sky Automobiles, Mahoba Bazar, Raipur, District Raipur (C.G.)

... Respondents

For Appellants : Mr. A.L. Singroul, Advocate, under instructions of Mr. P.K. Tulsyan, Advocate.
For Respondent 2 : Mr. Deepak Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/07/2017

1. Being aggrieved by the award dated 16.12.2016 passed by the Third Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur, in Claim Case No. 44 of 2016, the present appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by Appellants-Claimants, who are father and mother of the deceased Utkarsh *alias* Pranshu who died in a vehicular accident in the instant case.
2. Vide the impugned award dated 16.12.2016, a total sum of Rs. 3,54,000/- with interest thereon at the rate of 9% per annum, has been awarded by the Claims Tribunal as compensation in favour of the Appellants-Claimants, fastening the liability for payment of the same upon the Respondents being the driver-cum-owner and insurer respectively of Truck No.CG17-SS/3543 which was involved in the accident at the relevant point of time.

3. Facts of the case, in brief, as per the claim application, are that on 8.9.2015 while one Utkarsh *alias* Pranshu was going towards the Central School, Jagdalpur by driving a Scooty, bearing Registration No. CG17-KC/9462, he was hit by a Truck No.CG17-SS/3543 which was owned and driven by Respondent No.1 and insured with Respondent No.3. As a result of the said accident, Utkarsh *alias* Pranshu sustained grievous injuries and later on succumbed to his injuries.

4. This gave rise to the filing of the claim application under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (Amended on 1994) by the Appellants-Claimants before the Claims Tribunal claiming for a total compensation of Rs.21,30,000/- for the death of the deceased in the said vehicular accident.

5. Learned Counsel for the Appellants-Claimants has contended that the Claims Tribunal has arbitrarily assessed the income of the deceased as Rs.3000/-, which is not justified for the reason that the accident had taken place in the year 2015. He also contended that looking to the age of the deceased who was around 17 years at the time of accident and the fact that he was a student of 12th Class, his future prospects were also to be taken into consideration which has not been considered by the Claims Tribunal. It was next contended that the amounts awarded under the conventional heads are also on the lower side. He thus prayed that the impugned award may be modified and the amount of compensation may be enhanced suitably.

6. On the other hand, learned Counsel for Respondent No.2- Insurance Company has supported the impugned award.

7. 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 September, 2015. Taking into consideration the entire facts and circumstances of the case and also considering the age of the deceased as also the fact that he was pursuing his studies at the relevant point of time, this Court is of the opinion that the monthly income of the deceased of Rs.3000/- as has been assessed by the Claims Tribunal definitely is on the lower side. Even a daily wage labour was earning more than Rs.200/- per day and the monthly wage would come to Rs.6000/-. For all practical purpose wages of at least Rs. 150/- per day that would make it Rs.4500/- per month should have been taken by the Tribunal to calculate the compensation. The award therefore deserves to be and the same accordingly is ordered to be enhanced to the extent of Rs.4500/- per month and which comes to Rs.54,000/- per annum.

8. In addition, taking into consideration the fact that at the time of accident the deceased was 17 years of age and he was a student of Class 12th, in times to come there would had been definitely an increase in the income of the deceased. Under normal circumstances, it would be proper if the calculation of compensation is made taking into consideration at least 30% towards rise in his future income to be added for the purpose of calculating the quantum of compensation in view of the law laid down by the Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and Another** [2009 (6) SCC 121] and **Rajesh and Others Vs. Rajbir Singh and Others** [2013 (9) SCC 54].

9. Accordingly, after adding 30% of Rs.54,000/-, the actual income of the deceased comes to Rs.70,200/- per annum. If 50% of the said amount is deducted towards the personal expenses of the deceased, the amount would be Rs.35,100/- which after applying the multiplier of 18

would come to Rs.6,31,800/-. 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 a compensation of Rs. 6,31,800/- towards loss of income and dependency, instead of Rs. 3,24,000/- as awarded by the Claims Tribunal.

10. 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 sum amount of Rs.1,00,000/-, instead of Rs.30,000/- as has been awarded by the Claims Tribunal.

11. Thus, the total compensation payable to the claimants would be Rs.7,31,800/- against the total award of Rs.3,54,000/- as has been awarded by the Claims Tribunal and the claimants are entitled for a difference amount of Rs.3,77,800/- as compensation which is to be paid by the Respondents jointly and severally.

12. 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.3,77,800/- in addition to the compensation of Rs.3,54,000/- already awarded by the Claims Tribunal. The Respondents shall pay the said enhanced amount of compensation of Rs.3,77,800/- 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**

/sharad*/