

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 551/2017

1. Smt. Tijmat Bai Patel Wd/o Late Parmanand Patel, Aged About 48 Years
2. Ku. Meena Patel D/o Late Parmanand Patel, Aged About 18 Years
3. Bhuvan Prasad Patel S/o Late Parmanand Patel, Aged About 16 Years Minor Through Natural Guardian Mother Smt. Tijmat Bai Wd/o Late Parmanand Patel,

All are R/o Village Dhaskamuda, Police Station Chhal, Tahsil Dharamjaigarh, District Raigarh, Chhattisgarh

---- Appellants

Versus

1. Premchand Prakash Singh S/o Gaya Prasad Singh, Aged About 60 Years R/o Beside H.E.C.L. Colony, Dhurwa, Police Station Hattiya, District Ranchi (Jharkhand)
2. Oriental Insurance Company Limited, Through Divisional Manager, Division Office- Geetanjali Bhavan, Old Bus Stand Korba, Tahsil And District Korba, Chhattisgarh .

---- Respondents

For Appellants	:	Mr. Anil Gulati, Advocate
For Respondent No.2	:	Mr. Goutam Khetrapal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/08/2017

1. Heard on I.A. No.1. The reasons assigned in the application and finding them to be satisfactory, I.A. No.1 is allowed and delay of 67 days in filing the appeal stands condoned.
2. Present is an appeal filed by the claimants seeking for enhancement of compensation in the award dated 21.10.2016 passed by the learned 2nd Additional Motor Accident Claims Tribunal, Korba, District Korba (C.G.) in Motor Accident Claim Case No. 98/2015.
3. The facts in the instant case are not in dispute that, the deceased Parmanand Patel, aged about 52 years, died in an accidental death on 23.07.2015 occurred in the course of an accident involving offending vehicle i.e. Truck bearing registration No. CG-04-DA-5481. It is also not in dispute that the said offending vehicle was insured with the respondent No.2-Oriental Insurance Company Limited.

4. Claimants in the instant case had filed claim under Section 166 seeking for compensation of award which was allowed by the Tribunal granting total compensation of Rs.5,80,256/- alongwith interest @ 8% per annum. It is this award which is under challenged.
5. The grounds raised by the counsel for the appellant is that, the Court below has not taken into consideration the income under the future prospect for the purpose quantifying the compensation. Likewise amount of compensation under the loss of consortium and loss of love and affection is also considerably on the lower side and thus prayed for the award being considerably modified.
6. So far as question of computation of future income is concerned, the issue has been well settled by the Supreme Court in the case of "Sarla Verma & Others vs. Delhi Transport Corporation and Another" [2009 (6) SCC 121] whereby it has been held that deceased who is aged beyond 50 years, future income shall not be calculated.
7. Subsequently in another case i.e. in the case of "Rajesh and others vs. Rajbir Singh and others" 2013(9) SCC 54, the Hon'ble Supreme Court has granted 15% of future income should be taken into account while quantifying the income of the deceased. Though, this issue whether the income under future prospect should be taken into consideration in cases where the deceased are aged beyond 50 years has been referred to a larger bench of the Supreme Court in a subsequent decision.
8. In view of the fact that the matter is already subjected before Supreme Court and referred to larger bench following the view taken by the Supreme Court in case of Sarla Verma (supra) and subsequently which has been followed again in the case of "Reshma Kumari v. Madan Mohan" [(2013) 9 SCC 65], this Court is not inclined to accept the contentions of the appellant in this regard.
9. However, considering the judgment of Sarla Verma(Supra) and also the judgment passed by the Hon'ble Supreme Court in the case of Rajesh vs. Rajbir, this Court has no hesitation in reaching to the conclusion that, amount of compensation paid under the loss of consortium as well as under the loss of love and affection are on lower side and it is accordingly ordered that claimant shall be entitled

for compensation under both these heads of Rs.1,00,000/- each inclusive of what has already been awarded. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. Thus, claimant shall be entitled for total enhanced amount of Rs.1,50,000/- in addition to what has already been awarded.

10. The appeal is thus allowed in part and disposed off.

Sd/-
(P. Sam Koshy)
Judge

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