NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1505 of 2015

1. Itawari Ram Yadav, S/o. Late Dholiya Yadav, Aged About 40 Years,
2. Bablu Yadav, S/o. Itawari Ram Yadav, Aged About 20 Years
3. Miss Gunwati, D/o. Itwari Ram Yadav, Aged About 17 Years
4. Master Gunturam Yadav, S/o. Itwari Ram Yadav, Aged About 16 Years

   Appellants No.3 and 4 are Minor, Through their Father Itwari Ram Yadav (Appellant No. 1)

   All R/o. Village Raut Para Kadaguda Munjala P. S. Bhanpuri, District Bastar (Chhattisgarh)

---- Appellants

Versus

1. Loknath Sidar, S/o. Bhagat Ram Sidar, Aged About 32 Years, Through : Saiyyad Azhar Ali, S/o Saiyyad Akbar Ali, Aged About 43 Years, R/o. House of R. D. Prasad Hikamipara Jagdalpur, District Bastar (Chhattisgarh)
2. Saiyyad Azhar Ali, S/o. Saiyyad Akbar Ali, Aged About 43 Years, R/o. House Of R. D. Prasad Hikamipara Jagdalpur District Bastar (Chhattisgarh)
3. Shriram General Insurance Company Limited, Through : Branch Mangaer E-8, Ricko Industrial Area, Seetapur Jaipur (Raj) Pin 302022 (Insurer)

---- Respondents

For appellants	: Mr. P.K. Tulsyan, Advocate
For Respondent No.1 & 2	: Mr. Santosh Bharat, Advocate
For Respondents No.3.	: Mr. Deepak Gupta, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

13/09/2017

Heard.

1. This appeal has been brought against the award dated 26.08.2015, passed by the Motor Accident Claims Tribunal, Bastar at Jagdalpur, District – Bastar (C.G.), in Claim Case No.234/2014, in which the compensation of Rs.4,46,000/- has been granted to the appellants being dissatisfied, this appeal has been brought for enhancement.

2. Facts of the case are that appellants filed claim petition before the Motor Accident Claims Tribunal, stating that deceased Gagari Bai was travelling in truck bearing registration No.C.G.07C-5298 carrying her goods when the truck collided with a tree, which resulted in death of Gagari Bai. Appellants are legal representatives and the dependents of the deceased. Respondents being the driver, owner and insurer of the vehicle involved in the accident were impleaded as parties. It was claimed that deceased was in business of selling vegetables and dried fish, from which she earned Rs.8,000/- per month, from which the appellants were benefited. Stating that respondents are liable for paying compensation, prayer was made for grant of compensation on various heads to the tune of Rs.19,67,000/-.

3. The case was contested by respondent No.1 and 2. Proceeding took place against respondent No.3 ex-parte and the impugned award was passed, in which the respondents were held liable for payment of compensation and the award of compensation has been granted as aforementioned.

4. Counsel for the appellants submits that learned tribunal has erroneously assessed the income of the deceased at Rs.3,000/- per month, whereas, it was proved by production of evidence that deceased had earning of Rs.8,000/- per month and it is also submitted that assessment of compensation on the other heads made by the learned tribunal is also too much on the lower side, which may also be enhanced.

5. Counsel for the respondent No.3 submits that the case was heard ex-parte against the insurance company. On behalf of the insurance company, an application was moved before the tribunal for setting aside the ex-parte decree, but the same has been rejected by the tribunal. It is also submitted that the learned tribunal had been liberal in granting compensation and also there is no need of enhancement.

6. It is also submitted that time may be granted to file cross-appeal in this case. The respondent No.3 insurance company had liberty to file appeal against award passed by the tribunal below separately and he had liberty to file cross-appeal when notice of this appeal was received. Having not done so at the earlier occasion, no permission can be granted at this stage for filing any cross-appeal. Hence prayer made by the counsel for the respondent No.3 is rejected.

7. I have heard the learned counsel for the parties and perused the documents placed on record.

8. The question for determination in this appeal is, whether the assessment under the head of loss of income, loss of consortium,

love and affection, funeral expenses etc. need enhancement?

9. In the evidence, before the tribunal, Itwari Ram (AW-1) has stated that his wife was in business of selling vegetables and dried fishes from which she had earning of Rs.8,000/-. In cross-examination, this statement has remained unrebutted. No witness was examined by any of the respondents, hence, the sole and unrebutted statement of Itwari Ram Yadav (A.W.-1) was only statement in support of the income of the deceased. There was no reason to discard the statement. This earning can not be taken into consideration as profit made by the deceased, assuming that there may have been some amount of investment returned by the income shown in the evidence, hence, separating the investment, Rs.4,500/- can be taken as pure monthly income of the deceased to be on the safer side. Accordingly the annual income of the deceased comes out to Rs.54,000/-.

10. Admittedly the deceased was self employed person and no future prospects has been added by the learned tribunal below in such income, therefore, taking into account the age of the deceased, which is shown to be of 36 years, I think it proper to add the future prospects of 50% over and above the amount of Rs.54,000/-.

11. Considering the deduction made by the learned tribunal below, it appears that deduction of 1/4 from the total is not proper in this case as the appellant No.1 and 2 are major, who can be regarded as legal representative of the deceased but not dependents. The appellant No.3 and 4 are minors, who are the real dependents of the deceased, in that case the deduction from the income under the

head of own expenses of the deceased shall be 1/3.

12. The age of the deceased at the relevant time was 36 years, which is also not under challenge and as per the guidelines issued by the Hon'ble Supreme Court in case of ***Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation and Another,*** reported in ***(2009) 6 Supreme Court Cases 121,*** multiplier of 15 shall be applicable in this case.

13. The compensation for funeral expenses awarded by the tribunal is also on the lower side, which is enhanced to Rs.30,000/-. Similarly the compensation for loss of consortium and loss of love and affection, needs enhancement, which is enhanced to Rs.1,00,000/-, the amount of compensation awarded for loss of estate by the learned tribunal is maintained as it is.

14. Therefore, the total compensation is recomputed as under :-

S.No	**Heads**	**Calculation**
(i)	Income	Rs.4,500/- per month & Rs. 54,000/- per annum
(ii)	50% of (i) above to be added as future prospects	(Rs.54,000 + Rs.27,000) Rs.81,000/-
(iii)	1/3 of (ii) deducted as personal expenses of the deceased.	(Rs.81,000 – Rs.27,000) Rs.54,000/-
(iv)	Compensation after multiplier of 15 is applied.	(Rs.54,000 x 15) Rs.8,10,000/-
(v)	Loss of consortium and love and affection	Rs.1,00,000/-
(vi)	For funeral expenses	Rs. 30,000/-
(vii)	For loss of estate as ordered by Tribunal	Rs. 10,000/-
	Grand Total	**Rs.9,50,000/-**

15. Thus the appeal is allowed. Appellants/claimants shall be paid a total compensation of Rs.9,50,000/- by the respondents jointly and severally within a period of 60 days from the date of this judgment. On failure of respondents in payment of compensation awarded, interest @ 9% shall be chargeable from the date of this judgment till its realization. Compensation awarded by the tribunal below if paid, shall be adjustable in payment of compensation awarded by this Court.

16. In the result, the appeal is allowed. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram