

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1301 of 2015

1. Jeevanram Yadav (Wrongly mention as Jeevan Yadav), S/o. Late Rainuram Yadav, Aged About 55 Years,
 2. Smt. Phoolbai, S/o. Jeevanram Yadav, Aged About 49 Years,
 3. Laxminarayan Yadav, S/o. Jeevanram Yadav, Aged About 23 Years,
 4. Ku. Sweta Yadav, D/o. Jeevanram Yadav, Aged About 21 Years,
- All by Caste - Raut, R/o. Village Basant Nagar, Bhanupratappur, Thana and Tahsil - Bhanupratappur, District Uttar Bastar Kanker (Chhattisgarh)

---- Appellants

Versus

1. Bhishamdev, S/o. Gaya Ramdeo, Aged About 40 Years, Caste -Ganda, R/o. Gandhichowk, Dallirajharra, District- Balod (Chhattisgarh)
2. Sahid Khan, S/o. Late Hamid Khan, Aged About 42 Years, Caste - Musalman, R/o Sevtapara, Dongargaon, Ward No. 8, Tahsil and Thana -Dongargaon, District -Rajnandgaon.
3. Hiralal Bagh, S/o. Ankaluram Bagh, Aged About 47 Years, Caste Ravat, R/o. Ward No. 21, Shastri Nagar, Dallirajhara, District –Balod (Chhattisgarh)
4. Shriram General Insurance Company Limited, Through : Its Branch Manager, E-8, Riko Industries Area, Sitapura, Jaipur Rajasthan.

---- Respondents

For Appellants	: Mr. Parag Kotecha, Advocate
For Respondent No.4	: Mr. S.S. Rajput, Panel Lawyer
For Respondents No.1, 2 & 3.	: None present.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

17/07/2017

1. This appeal has been brought against the award dated 26.03.2015, passed by the learned Additional Motor Accidents Claims Tribunal, Bhanupratappur, District - Uttar Bastar, Kanker (C.G.), in Claim Case No.114/2012, challenging the quantum of compensation

awarded by the learned tribunal below.

2. Deceased -Umesh Kumar was son of appellant No.1 & 2 and brother of the appellant No.3 & 4. Deceased while traveling on a motor cycle met with an accident on 13.04.2012 on road between Dallirahara to Bhanupratappur, with Metador bearing No. C.G.-04-ZB-1553 resulting in death of the deceased. It is pleaded that deceased was unmarried and employed as daily wager in forest department at Bhanupratappur and appellants were dependent on his income.
3. Respondent No.1 was the driver of the metador No. C.G.-04-JB-1553. Respondent No.2 was registered owner and respondent No.3 was possessory owner of the said vehicle. It is also pleaded that respondent No.4 was the insurer of the vehicle.
4. Claim was preferred which was contested by respondents before tribunal below.
5. After affording opportunity of hearing to both the parties, impugned award was passed in which it was held that respondent No.1, driver of the veicle No. C.G.04-ZB-1553 was responsible for the incident because of his rash and negligent driving, which resulted in death of the deceased -Umesh Kumar. Further it was held that this vehicle was driven in contravention to the condition of insurance policy because of which respondent No.4, the insurance company has been exonerated from liability by the tribunal below. After making assessment and calculation on various heads, the learned tribunal below has ordered the respondents No.1, 2 and 3 to pay awarded compensation of Rs.3,54,000/- along with interest @ 6% per

annum.

6. The quantum of compensation has been challenged in this appeal on the ground that the income of the deceased was Rs.5,000/- per month was proved in the evidence, even then the tribunal has reduced the income of the deceased to Rs.3,000/- per month without assigning any reason for it. The compensation awarded in various other heads, is also on the lower side which needs enhancement. It is also submitted that tribunal below has erred in exonerating the insurance company - respondent No.4, which should have been held liable for payment of compensation to the appellants. Hence prayed that compensation awarded by the tribunal below be enhanced suitably.
7. Respondent No.1, 2 & 3 are not represented.
8. Counsel for the respondent No.4 has opposed this appeal limited to the point of liability. It is submitted that learned tribunal below has given a correct finding that offending vehicle was being driven in contravention of the conditions of the policy. Hence no liability can be fixed on the respondent No.4.
9. Heard the submission of both the parties present and perused the material on record.
10. Exoneration from liability of respondent No.4 was needed to be challenged by the respondent No.1, 2 and 3, who have preferred to remain absent and unrepresented in this appeal.
11. Firstly, taking the ground of enhancement, income of the deceased, appellant witnesses have made statement that deceased was a

daily wage worker employed in the forest department and was paid Rs.5,000/- monthly. This statement of appellant – Jeevan (P.W.1) has remain unrebutted although there is no proof of employment or payment of wages to the deceased, even then the Court has opted to assess that the income of the deceased was Rs.3,000/- per month considering this fact, that if a person duly employed by any government department could have earned Rs.5,000/- per month as daily wage worker. In absence of proof of such employment and payment, the earning capacity of the deceased could still be regarded as equivalent and it can be safely taken into consideration that deceased had capacity to earn Rs.4,000/- per month by doing labour work any where at the relevant time. Hence in this case, it appears that learned Tribunal has irresponsibly assessed the monthly income of the deceased without giving consideration to circumstances prevalent at that time. Hence this assessment needs interference in this appeal.

12. After due consideration, it is held that the deceased had capacity to earn Rs.4,000/- per month. Hence the calculation for loss of income shall be on this basis. Deceased was bachelor hence the deduction for his own expenses shall be 50%. After deduction, remaining amount Rs.2000/- can be regarded as the income of which the appellants were getting benefit. Hence on the basis of this loss per month, yearly loss of appellants comes to Rs.24,000/-. Learned tribunal below had applied multiplier of 18 to which there is no objection and no opposition, hence on the basis of this multiplier on calculating the loss, the total loss of income to the appellants comes to Rs.4,32,000/-, which can be regarded as just compensation for

loss of income of the appellants in this case.

13. In head of loss of love and affection, the amount awarded to the father and mother, appellant No.1 and 2, and brother and sister appellant No.3 and 4 is in total Rs.20,000/-, which needs enhancement and accordingly it is enhanced to Rs.50,000/-. Further expenses awarded towards cremation by the tribunal below was merely Rs.5000/-, which also needs enhancement and accordingly it is enhanced to Rs.25,000/-. Calculating all these amounts, a total of Rs.5,07,000/- is the amount with which the appellants are entitled to be compensated.
14. Accordingly, this appeal is allowed. It is ordered that respondent No.1, 2 & 3 shall pay Rs. 5,07,000/- as compensation to the appellants within a period of 45 days from today. On failure of their making payment, an interest at the rate 9% shall be chargeable on the compensation awarded in this case from the date of filing of application for compensation.
15. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
Judge