NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 398 of 2016

1. Smt Mukulika Mandal, W/o. Late Nirmal Mandal, Aged About 53 Years,
2. Anshpati Mandal, S/o. Late Nirmal Mandal, Aged About 31 Years,
3. Ramdas Mandal, S/o. Late Nirmal Mandal, Aged About 27 Years,
4. Samir Mandal, S/o. Late Nirmal Mandal, Aged About 24 Years,
5. Ku. Pratima Mandal, D/o. Late Nirmal Mandal, Aged About 22 Years,

All by Caste -Namoshudra, R/o. Village P.V. 122, Thana and Tahsil Pakhanjore, Distt. Kanker, Chhattisgarh

---- Appellants

Versus

1. Shivkumar Darro, S/o. Dasruram Darro, Aged About 22 Years, R/o. Village Chikhli, Thana Badgaon, Tahsil Pakhanjore, Distt. Uttar Bastar Kanker, Chhattisgarh
2. Jagnath Komra, S/o. S. Komra, R/o. Village Pachangi, Post Gurvandi, Thana and Tahsil Durgukondal, Distt. Uttar Baster Kanker, Chhattisgarh
3. National Insurance Company Ltd., Through Manager, Hero Honda Vertical, 101106, B.M.C. House N. I Cannaught Place New Delhi 110001

---- Respondents

For Appellants	: Mr. Parag Kotecha, Advocate
For Respondent No.3.	: Mr. Anil Gulati, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

16/08/2017

1. This appeal has been brought challenging the award dated 14.01.2015, passed by the learned Additional Motor Accidents Claims Tribunal, Bhanupratappur, Uttar Bastar Kanker in Claim Case No.37/2013, whereby the learned Claims Tribunal has awarded compensation of Rs.3,04,000/- as against the claim made of Rs.20,00,000/- on account of death of Nirmal Mandal, who died in

the road accident.

2. The brief facts of the case are that on 17.03.2013 at about 6.30 PM, deceased was going to his village from Kapsi Bazar riding a bicycle, at that time he was dashed by a motor cycle bearing registration No. C.G.05L-9220, driven by respondent No.2 rashly and negligently, which resulted in his death. Appellants claiming to be dependent of the deceased, filed a claim petition against the respondents, who are the driver, owner and insurer of the vehicle involved in the accident.

3. After affording opportunities to the parties to the present case, impugned award has been passed awarding compensation of Rs.3,04,000/- in favour of the appellants.

4. It is submitted by the counsel for the appellants that monthly income of the deceased has been assessed too much on the lower side to be only Rs.3,000/- per month, whereas it should not have been less than Rs.5,000/- per month. It is further submitted that compensation awarded under the head of loss of consortium, love and affection and for funeral expenses are also too much on the lower side and not in accordance with direction issued by the Hon'ble Supreme Court in ***Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation and Another,*** reported in ***(2009) 6 Supreme Court Cases 121*** and also the award under the head of loss of estate needs to be enhanced.

5. Counsel for the respondent No.3 has opposed the grounds in appeal and the submissions made in this behalf. It is submitted that finding arrived at by the learned tribunal below needs no

interference, as the appellants have been awarded just and proper compensation.

6. Counsel for the appellants has placed reliance in case of ***Sanobanu Nazirbhai Mirza and Ors. Vs. Ahmedabad Municipal Transport Service***, reported in ***2013 AIR SCW 5800,*** in which the Hon'ble Supreme Court has looking to the job done by the deceased held that his income should not be considered less than Rs.5,000/- per month. Reliance has also been placed on judgment of this Court in ***Smt. Rekha Uike & Ors. Vs. Amol Singh & Ors.***, reported in ***2017 (2) C.G.L.J. 508,*** in which it has been held that deceased being an able bodied person, his income could not have been less than Rs.4,500/- per month. In this case, the deceased – Nirmal Mandal was a agriculturist, hence it can not be said that he had monthly income. The evidence brought by the appellants also does not disclose whether deceased was the owner or occupier of agricultural land, hence at the most it can be made out that the deceased was agricultural labourer. Looking to the current rate of labour charges in the year of incident i.e. 2013 and looking to the days of leave per month, it can be safely concluded that the deceased had capacity to earn Rs.4,500/- per month at the time when he met with accident and died. Hence the income of the deceased assessed as Rs.3000/- by the tribunal below needs enhancement in this manner.

7. The deductions from the income made by tribunal below was 1/3 for the expenses of the deceased himself, which is also challenged on the basis of the direction issued in case of ***Sarla Verma (Smt.) &***

Ors. Vs. Delhi Transport Corporation (supra) in which it has been held that in case the number of dependents are 4 to 6, then the deduction for the expenses of the deceased shall be 1/4. At this point, counsel for the respondent No.3 has objected that the real dependent of the deceased is only his wife, the appellant No.1 and rest of all the appellants are major, who can not be regarded as dependent on the deceased. It is also submitted that even appellant No.5, unmarried daughter of the deceased is taken as another dependent, then the real dependents of the deceased shall be only two. Considering the submissions made by the counsel for respondent No.3, the deduction made by tribunal below appears to be proper, which needs no interference.

8. On the basis of the monthly income of the deceased as assessed herein above, yearly income of the deceased happens to be Rs.54,000/-, out of which after deduction of 1/3 towards personal expenses of the deceased, amount of Rs.36,000/- shall be the amount, which can be regarded as loss of income of the appellants. The multiplier selected by the tribunal below is not under challenge, hence multiplying the yearly loss of appellants with the same multiplier of 11, the total amount comes to Rs.3,96,000/- as loss of income, which the appellants are entitled to receive as compensation.

9. The award under other heads is also on the lower side. Therefore under the head of loss of consortium, love and affection, an amount of Rs.1,00,000/- is awarded in favour of the appellants and for the funeral expenses, the award amount is enhanced to Rs.25,000/-.

The amount of Rs.5,000/- awarded towards loss of estate remains unchanged. Hence the total compensation comes to Rs.5,26,000/-, which the appellants are entitled to receive as just and proper compensation.

10. Thus the appeal is allowed. Appellants/claimants shall be paid a total compensation of Rs.5,26,000/- by the respondents jointly and severally within a period of 45 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.

11. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram