

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1441 of 2016

1. Smt. Palmiki Khalkho W/o Simon Khalkho, aged about 38 Years
2. Simon Khalkho S/o Late Matiyas Khalkho, aged about 40 Years
both are R/o Kotagahana, P.S. & Tahsil- Rajpur, Distt. Balrampur-
Ramanujganj, Chhattisgarh.

---- Appellants

Versus

1. Arun Kumar Pandey S/o Shri Ramsurat Pandey, aged about 38 Years R/o
Ward No.33 Chhatamuda/Kabir Chowk Jut Mill Raigarh P.S. & Tahsil-
Raigarh, Distt. Raigarh, Chhattisgarh(Driver & Owner)
2. Branch Manager, National Insurance Company Ltd. Division Office- Taha
Complex Vyapar Vihar Ring Road No.1 Priyadarshani Nagar Bilaspur, Distt.
Bilaspur, Chhattisgarh

---- Respondents

For Appellants	: Shri Dashrath Prajapati, Advocate
For Respondent No.2	: Shri G. V. K. Rao, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

26.07.2017

Present is an appeal on behalf of the claimants under section 173 of the Motor Vehicle Act (in short MV Act) assailing the award dated 14/01/2016 passed by the 3rd Motor Accident Claims Tribunal, Ambikapur, Surguja (C.G.) in MACC No.42/2015. Vide the impugned award the Tribunal on the application under Section 166 of the Motor Vehicles Act moved by the appellant/claimants on the death of their 19 years old son Mandeep who met with an accidental death on 26.12.2014 has awarded compensation of Rs.4,90,000/-.

2. Contention of the counsel for the appellants is that evidence has been led before the Tribunal by the claimants claiming that the deceased had a cycle repairing shop and he was earning somewhere around Rs.300/- a day i.e. Rs.9,000/- a month and therefore the calculation for grant of compensation should have been made taking the monthly income as Rs.9,000/-. However, the Tribunal has taken only Rs.4,500/- a month assuming the daily income to be Rs.150/-. He submits that the Tribunal has also erred in as much as not granting any compensation under the head of future prospects which has by now become a mandatory inclusion so far as the grant of compensation is concerned. The Claims Tribunal has not granted any compensation towards other heads except for Rs.4,000/- towards funeral expenses. Counsel for the appellants further submits that the claimants had a serious blow in their life having lost their 19 years old boy so early in their life, therefore, the Tribunal ought to have been granted some compensation for the loss of love and affection as well as loss of estate. Thus, prayed for enhancement of the impugned award suitably.

3. Counsel appearing for the Insurance Company however opposes the appeal on the ground that the impugned award passed by the Tribunal is fair and reasonable and does not warrant any interference as the Tribunal has taken into consideration the evidences which have come on record, the age of the deceased and also the dependency of the claimants while passing the award. Thus, prayed for rejection of the appeal.

4. Having considered the rival contentions put forth on either side and on perusal of the record what clearly reflects from the record is that there does not seem to be any dispute regarding the appellant having a cycle repairing shop. Another aspect which cannot be lost sight is the fact that the date of accident is December 2014 during which time, even an unskilled labour was getting more than Rs. 200/- a day. The claimants have stated that their son was earning

roughly Rs.300/- a day i.e. Rs.9,000/- a month. Even if that is not accepted in toto, the income of the deceased had to be assumed somewhere around Rs.6,000/- a month in stead of Rs.4,500/- as awarded by the Tribunal. Thus, it is held that the claimants would be entitled for compensation quantifying his wages at Rs.6,000/- per month.

5. So far as the refusal of adding of income towards future prospects is concerned, the finding of the Tribunal does not seem to be proper as the Tribunal has refused to grant the said relief of future prospects relying the judgment of the Supreme Court in the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54** whereas, the said judgment does not lay any such proposition. On the contrary, the said judgment, in fact, fortifies the claim of the claimants for grant of compensation by adding the income under future prospects also. Thus, this Court holds that the appellants would also be entitled for 50% of the income to be calculated towards future prospects for the purpose of quantifying the compensation. Similarly except for Rs.4,000/- which has been granted for funeral expenses, no amount has been granted for the loss of love and affection and loss of estate. This also seems to be a bit harsh on the part of the Tribunal which ought to have been a little more liberal in its approach.

6. Taking into consideration the law laid down by the Supreme Court in the case of Rajesh (supra) this Court is of the opinion that ends of justice would meet if the appellants are granted Rs.1,00,000/- towards other heads inclusive of funeral expenses, loss of love and affection, loss of estate etc. in stead of Rs.4,000/- which has been awarded by the Tribunal only under the head of funeral expenses.

7. Further, accepting the monthly wages of the appellant to be Rs.6,000/- a month if we add 50% of it towards future prospects, the total monthly wages would be Rs.9,000/- of which if 50% is deducted towards personal expenses, the

figure comes to Rs.4,500/- a month and the yearly income would be Rs. Rs.54,000/-. If the said amount is multiplied by applying the multiplier of 18, the compensation payable to the claimants under the head of loss of income would be Rs.9,72,000/-. After adding Rs.1,00,000/- under the other heads, the total compensation payable to the Claimants would be Rs. 10,72,000/-. Accordingly, the claimants shall be entitled for a total compensation of Rs.10,72,000/- in stead of Rs.4,90,000/- as awarded by the Tribunal. The enhanced compensation of Rs.5,82,000/- shall be paid by the Insurance Company within a period of two months from today. The enhanced compensation amount shall also carry interest at the rate as awarded by the Tribunal. Rest of the directions in the award shall remain intact.

Sd/-

(P. Sam Koshy)
Judge