NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1015 of 2011

1. Smt. Vinitha M., Aged about 37 years, Wd/o. Late Jyoti Prakash M.
2. Aarjeet M., Aged about 6 years, S/o. Late Jyoti Prakash M.
3. Arjun M., Aged about 9 months, S/o. Late Jyoti Prakash M.

   Appellant No.2 & 3 are Minors, through their mother, appellant No.1 Smt. Vinitha M.
4. Smt. M. Hemlata Amma, Aged about 70 years, W/o. Late Shri Bala Krishnan Nair,

   All are R/o. C-20, Housing Board Colony, Kota, District Raipur, Chhattisgarh

---- Appellants

Versus

1. Akbar Khan, Aged about 57 years, S/o. Haneef Khan, R/o. Veer Sawarkar Nagar, Tatibandh, 465 Janta Quarter, Hirapur, Police Station Amanaka, Tahsil and District Raipur, Chhattisgarh

   Presently Through, Super Road Lines, Opp. Happy Dhaba, Tatibandh, Raipur Chhattisgarh (Owner & Driver)
2. Oriental Insurance Company Ltd. Through Branch Manager, DO-5, Room No.33, Stephen House, 4-B.B.D., B.A.G. (East), 2nd Floor, Kolkatta (W.B.)

----Respondents

For Claimants	:	Ms. Raashi Tiwari, Advocate and Mr. Keshav Dewangan, Advocate (Amicus curiae appointed by the Court)
For Insurance Company	:	Mr. Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/01/2018

1. Since there was no representation on behalf of the appellants, this Court thought it fit for taking assistance of Mr. Keshav Dewangan, Advocate for the disposal of the appeal, as the appeal is of the year 2011.

2. Present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act assailing the award dated 19.08.2011, passed by the 5th Additional Motor Accident Claims Tribunal, Raipur,

Chhattisgarh, in Claim Case No. 52/2011, whereby the Tribunal in a death case under Section 166 of Motor Vehicles Act has awarded a compensation of Rs.11,38,344/- with interest @9% per annum from the date of application.

3. The contention of the counsel for the Claimants is that the Tribunal has not properly assessed the income of the deceased while quantifying the compensation and the same deserves for suitable enhancement. He further submits that the Claimants would also be entitled for compensation under the future prospects also and the compensation paid under the conventional head also is unreasonably low and the same deserves for suitable enhancement. Likewise, it was also the contention that the deduction made ought to have been 1/4 instead of 1/3 as has been assessed by the Tribunal and prayed for the appeal to be allowed and the amount of compensation be suitably enhanced.

4. The counsel for the Insurance Company however opposing the appeal submits that if we consider the findings of the Tribunal, it would reveal that the Tribunal has in fact considered all the evidences, which have come on record and as such there is not much scope left for enhancement of the compensation and prayed for the rejection of the appeal.

5. Having heard the contentions put forth what are the undisputed from the evidences which have come on record is the date of accident to be 22.02.2010, the vehicle involved being a Truck bearing registration No. CG/04/J/9325. The resultant death of Jyoti Prakash M. aged around 40 years, the offending truck being owned and

driven by the respondent no.1 at the time of accident and it was also duly insured with the respondent No.2- Insurance Company. From the evidence, which has been led by the Claimants it has been revealed that the deceased in the instant case Jyoti Prakash M. was working as a Manager with one of the reputed electrical companies in the State of Chhattisgarh i.e. Surya Wire Private Limited and PW/2-Swaminath Mishra is one of the witnesses from the establishment of Surya Wire Pvt. Ltd. to prove the employment as also the salary of the deceased.

6. Exhibit P/53 is the salary certificate of the deceased for the month January, 2010, where the gross income of the deceased Jyoti Prakash M. was shown as Rs.12,000/-, whereas the Tribunal has assessed the income of the deceased at Rs.9,000/-. So far as difference of Rs.3000/- is concerned, those are the deductions made from the salary of the deceased and therefore this Court has no hesitation in reaching to the conclusion that the said deductions also were part of the income of the deceased, which could not have been deducted and therefore this Court assesses the income of the deceased at Rs.12,000/- instead of Rs.9000/- as assessed by the Tribunal.

7. Further, considering the recent larger Bench decision of the Hon'ble Supreme Court in the case of ***"National Insurance Company Limited vs. Pranay Setthy and Others" decided on 31.10.2017, in Civil Appeal No. 25590/2014***, this Court is of the opinion that the Claimants would also be entitled for 50% of his income towards

future prospects as he was aged below 40 years and had a permanent employment with the Surya Wire Private Limited.

8. Accepting Rs.12,000/- as the month income, the yearly income would come to Rs.1,44,000/- of which 50% towards future prospects would be Rs.72,000/-, which would bring the yearly income at Rs.2,16,000/- of which there would be a deduction of 1/4 i.e. Rs.54,000/- towards the personal expenses, this would bring the amount to Rs.1,62,000/-. If the said amount is multiplied applying the multiplier of 15, the amount would come to Rs.24,30,000/-. In addition, the Claimants shall also be entitled for a lump sum compensation of Rs.70,000/- instead of Rs.20,000/- as awarded by the Tribunal towards the conventional head to make the total compensation payable at Rs.25,00,000/- instead of Rs.11,38,344/-.

9. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. This Court extends a word of appreciation to Mr. Keshav Dewangan, Advocate for rendering the assistance in the disposal of the case.

11. The Registry is directed to send a copy of this judgment to the Secretary, District Legal Services Authority, Raipur, Chhattisgarh, who in turn, is directed to make all efforts to ensure serving a copy of this judgment to the Claimants at the address shown in the cause title.

Sd/-
(P. Sam Koshy)
Judge

Ved