AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 119 of 2016

1. Smt. Niteshwari Sahu Wd/o Late Nand Lal Sahu, aged about 27 years,
2. Nitin Sahu S/o Late Nand Lal Sahu, aged about 01 years
3. Tiju Ram Sahu S/o Late Ghasi Ram Sahu aged about 56 years,
4. Smt. Pusai Bai W/o Tiju Ram Sahu aged about 50 years,

Appellants No.2 is minor hence impleaded through their natural guardian mother i.e. appellant no.1, Smt. Niteshwari Sahu Wd/o Late Nand Lal Sahu, aged about 27 years.

All are R/o Shahid Vir Narayan Singh Nagar Khursipar, Bhilai, Durg, District Durg, C.G.

---Appellants/Claimants

Versus

1. Prabhat Kumar Banchhor S/o Surya Banchhor aged about 24 years, R/o Shanti Nagar, Purani Bhilai District Durg, C.G.
2. Navin Kumar Sahu S/o Hira Lal Sahu aged about 30 years, R/o Indira Para, Purani Bhilai, District Durg, C.G.
3. The New India Insurance Company Limited, through Divisional Manager, Divisional Office Near Chandra Maurya Talkise, G.E. Road, Supela, Bhilai, District Durg, C.G.

---- Respondents

For Appellants	Shri Amiyakant Tiwari, Advocate.
For Respondent Nos. 1 & 2	Shri Lakhram Dhruv, Advoate on behalf of Shri Jitendra Gupta Advocate.
For Respondent No.3	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

05.12.2018

1. This appeal is by the claimants against the award dated 28.10.2015 passed by the 2nd Additional Motor Accident Claims Tribunal, Durg, C.G. in Claim Case No.37/14 awarding total compensation of Rs.13,02,500/- with interest @ 6 per annum from the date of application till realization, fastening liability on the Insurance

Company.

2. As per claim petition, on 24.06.2013 deceased Nand Lal Sahu, aged about 28 years, earning Rs.19,948/- per month as an Assistant Executive, died in the motor vehicular accident caused due to rash and negligent driving of vehicle pick up bearing registration no. CG04/JA/1492 by non-applicant No.1, owned by non-applicant no.2 & insured with non-applicant no.3.

3. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. Learned counsel for the appellant submits that Tribunal was not justified in assessing the monthly income of the deceased as Rs.5,000/- after deducting certain allowances from her salary whereas from the salary slips filed and proved by the claimants that the deceased was getting salary of Rs.19,948/- per month and therefore, the compensation is required to be reassessed by taking the above salary of the deceased. However, he does not dispute the rest of the assessment made by the Tribunal i.e. grant of future prospect, deduction towards personal and living expenses, application of multiplier and grant of amount under the conventional heads.

5. On the other hand, learned counsel appearing for the respondents would submit that the amount of compensation awarded by the Tribunal is just and proper in the facts and circumstances of the case and needs no interference.

6. No counter appeal has been filed by the non-applicants.

7. I have heard the learned counsel appearing for the parties and perused the impugned order including the records of the Claims

Tribunal.

8. Considering the facts and circumstances of the case, the documents Ex.P-31 to P-33 relating to salary of the deceased filed and proved by the claimants, the documents Ex.P-22(C) to 26(C) relating to educational qualification of the deceased, evidence of AW-3 Akash Tandon, this Court is of the opinion that the Tribunal was not justified in assessing the monthly income of the deceased as Rs.5,000/-. From the record, it is seen that the deceased was getting Rs.2,000/- towards house rent allowance and Rs.9,345/- towards incentive. These allowances cannot be deducted from the salary of the deceased for the purpose of grant of compensation. So far as, the amount of Rs.1,750/-, Rs.1,500/-, Rs.500/- and Rs.1,000/- granted to the deceased towards performance allowance, transport allowance, cashier allowance etc, the same cannot be considered as income of the deceased and has rightly been deducted by the Tribunal from the salary of the deceased for recomputing the compensation. Therefore, this Court is of the opinion that the income of the deceased comes to Rs.5,000/- + Rs.2,000/- (HRA) + Rs.9,345 (Incentive) = Rs.16,345/- which is rounded off of Rs.16,350. Thus, the compensation is reassessed as under:-

SI.No.	**Heads**	**Calculation**
1.	Income of the deceased	Rs.16,350 x 12 = Rs.1,96,200/- per annum
2.	50% towards future prospects	Rs.1,96,200/- + Rs.98,100/- = Rs.2,94,300/-
3.	¼ deduction towards personal and living expenses of the deceased	Rs.2,94,300 – Rs.73,575 = Rs.2,20,725/-

4.	Multiplier of 17 to be applied	Rs.2,20,725/- x 17 = Rs.37,52,325/-
5.	Towards Funeral (as awarded by the Tribunal)	Rs.25,000/-
6.	Towards loss of consortium (as awarded by the Tribunal	Rs.1,00,000/-
7.	Towards loss of love and affection (as awarded by the Tribunal)	Rs.30,000/-
	Total Compensation	**Rs.39,07,325/-**

9. Since the Tribunal has already awarded Rs.13,02,500/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.26,04,825/- with interest @ 6% per annum from the date of application till realization.

10. In the result, the appeal is allowed in part with modification in the award impugned to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh