NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 938 of 2012

1. Smt. Anita Sharma Wd/o Rajesh Sharma, aged about 24 years.
2. Ms.Suman Sharma D/o Late Rajesh Sharma, aged about 6 years.
3. Master Nitesh Sharma S/o Late Rajesh Sharma, aged about 4 years.
4. Bhawarlal Sharma S/o Sawarlal Sharma, aged about 60 years.
5. Smt. Babali Sharma W/o Bhawarlal Sharma, aged about 58 years.
6. Mahendra Sharma S/o Bhawarlal Sharma, aged about 25 years.

   All are R/o Balimela Chowk, Malkangiri, District Malkangiri, Present residence at Manjhapara, Kanker, District North Bastar Kanker (C.G.).

   Appellants No. 2 & 3 are minor, represented through natural guardian appellant No.1 Smt. Anita Sharma.

---Appellants

Versus

1. K.Palani @ Sujan S/o N.Krishna Swami, aged about 52 years, R/o Mainroad Malkangiri, District Malkangiri (Driver).
2. K.Gangabai W/o K.Neelkanth, aged about 38 years, R/o Durgagudi Street, Malkangiri, District Malkangiri (Owner).
3. The Iffco tokiyo general Insurance Co. Ltd. 345-47, third floor, Lalganga Shopping Mall, G.E.Road, Raipur, District Raipur (C.G.) (Insurer).

---Respondents

For appellants/claimants	:	Shri P.K.Tulsyan, Advocate.
For respondent No.3/Insurance Company.	:	Shri P.Acharya on behalf of Shri Amrito Das, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/02/2018

1. Present is an appeal filed by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 11/01/2012 passed by the learned Motor Accident Claims Tribunal, North Bastar, Kanker (C.G.) in Motor Accident Claim Case No. 42/2010.

2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.11,01,656/- with interest @ 6% per annum from the date of application.

3. The challenge is to the quantum of compensation awarded by the Tribunal.

4. The counsel for the appellants/claimants submits that, the claimants were entitled for much more compensation than what has been awarded by the Tribunal. He further submits that, it is a case where the claimants had brought before the Tribunal the previous three years Income Tax Return to show the annual income of the deceased and in all the three years, the income of the deceased was much more than what has been assessed by the Tribunal. He further submits that, the Income Tax Return shows that, there was a gradual increase in the income of the deceased as is reflected from the Income Tax Return of three years which were all filed during the lifetime of the deceased himself and thus the Tribunal should not have taken Rs.1,00,000/- as the income, but should have taken the actual income of the last year for the purpose of quantification of compensation. He further submits that, the claimants would also be entitled for a compensation under the future prospects while quantifying the compensation. He further submits that, the deduction towards the personal expenses also should had been 1/4th rather than 1/3rd as has been done by the Tribunal and thus prayed for suitable enhancement of the award.

5. The counsel for the Insurance Company however opposing the appeal submits that, it is a case where the Tribunal has taken fair and reasonable assessment of income of the deceased and has quantified the same at Rs.1,00,000/- which does not seem to be unreasonable or on the lower side in any manner and thus the income assessed by the Tribunal does not warrant any interference. He further submits that, so far as the other part of the award is concerned, the same is based on the material which have been brought on record and therefore there does not appear to be any scope of enhancement and thus prayed for rejection of the appeal.

6. Having heard the contentions put forth on either side and on perusal of the evidence which has been brought on record by the claimants it would show that, the date of accident admittedly is of 25/03/2010. The Income Tax Returns for three previous years i.e. for the assessment years 2007-08, 2008-09 and 2009-10 in which the gross income of the deceased for the year 2007-08 was Rs.1,25,890/-. Next year it was Rs.1,46,500/- and for the year 2009-10, the income showed at Rs.1,68,840/-. Thus, there was a gradual increase in his gross income each year. In spite of these three documents which are established income of the deceased, the Tribunal has taken the income of the deceased at Rs.1,00,000/- yearly without there being any base for reaching to the said figure. Even if we take the average income of the three years, the figure would be more than what has been assessed by the Tribunal.

7. Under the given facts and circumstances, this Court assesses the annual income of the deceased at Rs.1,35,000/- for the purpose of quantifying the compensation instead of Rs.1,00,000/- as assessed by the Tribunal. The claimants would also be entitled for 40% of the income towards future prospects which come to Rs.54,000/-. If Rs.54,000/- is added to the yearly income, the figure would become Rs.1,89,000/- of which 1/4th is deducted towards personal expenses considering the total number of dependents, the amount left would be Rs.1,41,750/- which if multiplied by applying multiplier of 16, the amount would come to Rs.22,68,000/-. Thus, it is ordered accordingly that the claimants shall be entitled for a compensation of Rs.22,68,000/- towards loss of dependency. In addition, the claimants would also be entitled for an additional amount of Rs.70,000/- towards the conventional head which would make the total compensation payable to the claimants at Rs.23,38,000/- instead of Rs.11,01,656/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

8. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit