NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.296 of 2011

1. Jagdish S/o Late Shawal Keshav Masih, aged about 57 years.
2. Urmila W/o Jagdish, aged about 52 years.
3. Shweta W/o Late Jyotish Masih, aged about 29 years.
4. Jyoshit S/o Late Jyotish Masih, aged about 9 months, minor, represented through natural guardian mother Smt.Shweta Masih.

   All are R/o Sankra Bangla, Post Office Sankara Bangla, Tahsil and District Balod, District Durg (C.G.).

---Appellants

Versus

1. Vimal Kumar S/o Haribandhu, Caste Nag, R/o Nayamunda, Jagdalpur, Police Station Bodhghat, Jagdalpur, District Bastar (C.G.).
2. Smt.Davinder Kaur D/o Paramjeet Singh, aged about 38 years, R/o Ganganagar Ward, Jagdalpur, District Bastar (C.G.).
3. Senior Divisional Manager, The New India Insurance Company Limited, Mobin Mahal Jail Road, Raipur, Tahsil and District Raipur (C.G.).

---Respondents

For the appellants	:	Shri R.K.Pali along with Shri P.P.Sahu, Advocates.
For resp.No.2	:	Shri Keshav Dewangan, Advocate.
For resp.No.3/ Insurance Company	:	Shri Shivendu Pandya, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/01/2018

1. Present is an appeal filed by the claimants under Section 173 of the Motor Vehicles, Act assailing the award dated 15/12/2010 passed by the learned Additional Motor Accident Claims Tribunal (F.T.C.), Balod, District Durg (C.G.) in Motor Accident Claim Case No.125/2009.

2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.6,92,576/- with interest @ 6% per annum from the date of application.

3. The counsel for the appellants submits that, the Tribunal had not granted compensation to the claimants in respect of the actual medical expenses which they have incurred at hospitals of Dhamtari, Vellur and Bhilai. He further submits that, it is a case where the accident took place on 30/07/2008 wherein the deceased-Jyotish Masih had sustained grievous injuries and hospitalized at Dhamtari from where he was shifted at Sector-9 Hospital, Bhilai and further to CMC Hospital, Vellur and he ultimately died on 19/08/2008 after about 20-21 days. The counsel for the appellant submits that, the deceased in the instant case was working in a hospital located at Dhamtari as a Supervisor and also had a business of Poultry Farm. He further submits that, the income assessed by the Tribunal at Rs.3,500/- is on the lower side. Similarly, the deductions made also is of 1/3rd whereas taking into consideration the number of claimants, the deduction ought to had been 1/4th. Likewise, the claimants are also entitled for compensation under the future prospects. It was further contended that, the Tribunal had not considered the bills that had been produced before the Tribunal in respect of treatment at the hospitals of Dhamtari, Vellur and Bhilai. He further submits that, the amount of compensation paid under the conventional head is also on the lower side and same deserves suitable enhancement.

4. The counsel for the Insurance Company on the contrary opposing the appeal submits, that the finding of the Tribunal does not warrant any interference as it is based upon the evidence which has come on record and that the claimants have not been able to prove these bills by calling upon the doctors of hospitals at Dhamtari, Bhilai or Vellur to prove the expenditure incurred.

5. Having heard the contentions put forth on either side and on perusal of record, the date of accident, the vehicle involved in the accident, the deceased sustaining grievous injuries from the accident are not in dispute. Likewise, it is also not in dispute that, the offending vehicle was duly insured with the respondent No.3/Insurance Company.

6. So far as quantum of compensation is concerned, the date of accident is 30/07/2008 and the income assessed by the Tribunal is Rs.3,500/-. In the year 2008, the minimum income of even an unskilled labour would had been somewhere around Rs.150/- per day i.e. Rs.4,500/- per month. This Court quantifies the monthly income of the deceased at Rs.4,500/- instead of Rs.3,500/- which makes the yearly income at Rs.54,000/- of which the claimants are also entitled for 40% towards future prospects which is Rs.21,000/- which if added to the yearly income, the amount would become Rs.75,600/- of which if 1/4th is deducted towards personal expenses, the amount left would be Rs.56,700/- which if multiplied by applying multiplier of 16, the amount would come to Rs.9,07,200/-.

7. Undisputedly, the deceased in the instant case was under treatment from the date of accident till the date of death. There is no dispute so far as nature of injuries and the fact that he was undergoing treatment during this period. It is also not in dispute that, he was initially admitted to a hospital at Dhamtari. Thereafter he was sent to Sector-9 hospital, Bhilai and later on to CMC, Vellur. The deceased and the claimants must have incurred a huge amount of medical expenses for his treatment at all these places. Only because the doctor from the concerned hospital has not been examined before the Tribunal would by itself not make the bills which have been produced and exhibited before the Tribunal to be inadmissible. Once when the treatment at these places are not in dispute, there is no reason to disbelieve the bills which have been raised by the claimants.

8. This Court allows the hospital expenditure at CMC, Vellur at Rs.2,36,756/-. In addition, the claimants are also entitled for an amount of Rs.1,41,381/- which is the medical expenses incurred at Dhamtari as well as Sector-9 Hospital, Bhilai. Further, this Court also visualizes the expenditure which the claimants must have incurred on the death of the deceased as he was brought in a Mortuary Van. Further, the other relatives of the deceased had accompanied the Mortuary Van in a separate vehicle for which bills were also produced and exhibited before the Tribunal as Exhibit-P/85 of Rs.50,000/-. This Court allows and orders for the said amount to be paid to the claimants. Further, this Court also quantifies the compensation towards engagement of an attendant and miscellaneous expenses towards travel

expenditure at Rs.20,000/-. In addition the claimants would also be entitled for an amount of Rs.12,000/- towards special diet.

9. Thus, the total compensation payable to the claimants would become Rs.14,43,532/- instead of Rs.6,92,576/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. With the aforesaid modification, the appeal stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit