NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 151 of 2012

1. Smt. Suruj Bai Yadav, W/o Late Shobha Ram Yadav, Aged About 38 Years, Occupation – Housewife.
2. Balram Yadav, S/o Late Shobha Ram Yadav, Aged About 26 Years.
3. Dauram Yadav, S/o Late Shobha Ram Yadav, Aged About 24 Years.

All R/o Jhopdapara, Near Soni Pan Thela, Chowki- Sirgitti, Thana- Tarbahar, Tah. And Distt. Bilaspur, Chhattisgarh

---- Appellants

Versus

1. Chhattisgarh Electricity Board, Through : President, Rampur, Distt. Jabalpur M.P. 2nd Address - Stay In Chhattisgarh State (C.G.)
2. Chhattisgarh Electricity Board, Through : Chief Engineer, Tifra, District : Bilaspur, Chhattisgarh
3. Executive Engineer, Chhattisgarh Electricity Board, Tifra, District : Bilaspur, Chhattisgarh
4. State of Chhattisgarh, Through : Collector, Bilaspur, District : Bilaspur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Sudhir Agrawal, Advocate.
For Respondent Nos.1 to 3	:	None.
For Respondent No.4/State	:	Shri R.K. Mishra, Deputy Advocate General.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

Per Manindra Mohan Shrivastava, J

24/09/2018

1. Heard.

2. This is claimants appeal in the matter of claim of compensation on account of death of Shobha Ram, husband of Appellant No.1/Smt. Suruj Bai Yadav and father of Appellant No.2/Balram Yadav and Appellant No.3/Dauram Yadav. In an unfortunate accident which occurred on 09.09.1995, villager

and agriculturist Shobha Ram died of electricity due to he coming in the contact of live electric wire maintained by Respondent/Electricity Board. This led to filing of an application for compensation by the Appellants before the Court below. In the suit for compensation, it was pleaded that the deceased, aged 45 years, was running a business of sale of milk and he was maintaining five milking buffaloes out of which, he was earning at least Rs.200/- per day, excluding all other expenses. After his death, his widow and minor sons are left in lurch.

The claim was disputed by the Respondent/Electricity Board.

3. The learned trial Court after allowing the parties to lead evidence recorded a finding regarding loss of dependency @ Rs.12,000/- per annum and applying a multiplier of 9, awarded compensation of Rs.1,08,000/- alongwith compensation on other heads like funeral expenses, loss of consortium, loss of estate and love and affection.

4. In this appeal, seeking enhancement of the compensation, learned counsel for the Appellants submits that the learned Court below while assessing the annual income of the deceased, ignored that the Appellants by specific pleadings and clinching uncontroversial testimony proved that the deceased was maintaining five milking buffaloes and was earning per day at least Rs.200/- after deduction of all other expenses. The learned trial Court without any basis and only on assumption reduced this amount to Rs.100/- per day.

The next submission is that the deceased was 45 years of age and there was nothing on the record that he was ailing, therefore, as per **Sarla Verma & Ors Versus Delhi Transport Corporation** reported in **2009 (6) SCC 121** judgment the multiplier of 14 ought to be applied.

5. Shri R.K. Mishra, Deputy Advocate General appears for the State and submits that the main contesting party would be the Electricity Board. There is no representation by the Electricity Board.

6. In the plaint it has been categorically averred by the Appellants that deceased Shobha Ram was maintaining as many as five milking buffaloes and was selling above 80 to 90 litres of milk per day and after deduction all expenses, was earning Rs.200/- per day. To prove the aforesaid averments with regard to the earning, Appellant/Smt. Suruj Bai Yadav has examined herself as the first witness. In her affidavit under Order 18 Rule 4 of CPC, she has stated in para 7 that her husband was maintaining five buffaloes and was getting 80 to 90 litres of milk every day which was being sold by him and was saving Rs.200/- per day after deducting all expenses. In her cross examination, however, she has stated in para 17 regarding average production of 80 litre of milk per day. As to what was the rate of milk prevalent at that point of time, her evidence is not clinching and she is given different rates. On such evidence she claims she that her husband and was earning about Rs.200/- per day after deduction of all expenses.

7. Considering the aforesaid pleading and evidence that claim of Rs.200/- per day is based of production of 80 to 90 litres of milk per day and further that no specific rate of milk has been proved and even according to PW-1 average production of milk is 80 litre per day, we are inclined to take the income of the deceased as Rs.150/- per day. On this basis the annual income would be Rs.54,000/-. Deducting 1/3rd as personal expenses it comes to Rs.36,000/- per year.

8. In so far as multiplier aspect is concerned there is no dispute raised by the Respondents that the deceased was 45 years of age and has been stated to be a normal healthy person. If that be so, according to the Supreme

Court decision in Sarla Verma's case the multiplier of 14 ought to be applied. Thus, the compensation worked out is Rs.36,000 x 14 = Rs.5,04,000/- this amount according to us appears to be a just, fair amount of compensation to which the Appellants were are entitled on the basis of pleading and evidence on record. In addition, as per Supreme Court decision in the case of **Reliance General Insurance Co. Ltd. Vs. Shalu Sharma & Others** reported in **2018 (2) SCCD 610 (SC)**, additional 25% for future prospect, in addition to other amounts towards loss of consortium, loss of estate and funeral expenses, is liable to be added. The total amount would thus, arrive at Rs.6,30,000/-. Applying the law laid down in the case of **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680**, the Appellants would be further entitled to Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses and thus a total of Rs.70,000/-.

9. Accordingly, this appeal is partly allowed in the manner that the Appellants shall entitled to total compensation of Rs.7,00,000/- towards compensation on which they are entitled to interest @ 10% from the date of filing of the suit and @ 6% from the date of judgment till the date of recovery.

10. Appeal is accordingly allowed. Let appellate decree be accordingly drawn.

Sd/-	Sd/-
(Manindra Mohan Shrivastava)	**(Gautam Chourdiya)**
Judge	**Judge**

Brijmohan