HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 450 of 2018

1. Basanti Bai, Widow of Late Shyamlal Deewan, aged about 47 years,
2. Nand Kumar, aged about 28 years, son of Late Shyam Lal Deewan,
3. Ramkumar, aged about 23 years, son of Late Shyamlal Deewan

   All are resident of Telipara, Kankharpuri Kurud, Tahsil, Kurud District Dhamtari, C.G.

---- Appellants

Versus

1. Homeshwar Dhruv (Deewan), aged about 27 years, son of Late Hirau Ram Deewan, R/o Village Gadadeeh (Umarda) P.S. Kurud, District Dhamtari C.G.

   (Driver of Tractor No. CG-05-AA-2535)
2. Bhagoliram Sinha, aged about 60 years, son of Shri Sukhram Sinha, R/o Sanjay Nagar, Shikshak Colony, Kurud, Tahsil Kurud District Dhamtari C.G. (Owner of Tractor No. CG-05-AA-2535)
3. Branch Manager, United India Insurance Company Limited, Bathena Chowk, Dhamtari, Sinha Complex, Taipur Road Dhamtari, Tahsil and District Dhamtari C.G.(Insurer of Tractor No.CG05-AA-2535)

---- Respondents

For Appellants	Shri P.K. Patel, Advocate.
For Respondent No.3	Shri R.N. Pusty, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

06/10/2018

1. This is claimant's appeal seeking enhancement of compensation awarded by the Additional Motor Accidents Claims Tribunal (FTC) Dhamtari, District Dhamtari C.G. (for short 'the Tribunal') in Claim Case No. 106 of 2017 vide award dated 15.12.2017.

2. As against the compensation of Rs.18,90,000/- claimed by the unfortunate widow and children of deceased – Shyamlal Deewan by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for his death in the motor accident on 26.04.2017, the Tribunal

awarded a total sum of Rs.04,97,753/- along with interest @ 6% per annum from the date of application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led by the parties, held: the accident had occurred due to sudden reverse of the offending vehicle i.e. Tractor bearing registration No.CG-05-AA-2535 by its driver – Homeshwar Dhruv (Deewan), respondent No.1 herein: Shyamlal Deewan died on account of injuries sustained by him in the said accident; respondent No.3/ Oriental Insurance Company liable for payment of compensation as it could not establish any violation of policy conditions; assessed and awarded the aforesaid sum as compensation.

4. Learned counsel for the appellant, would submit that the applicant was a labour, was earning Rs. 7,000/-/- per month but learned Tribunal wrongly considered his income on the basis of minimum wages at the rate of Rs.164/- per day i.e. Rs. 4264/- for 26 working days only. Lastly, he submits that the Tribunal has also erred by not granting any amount towards future prospect. Therefore, the appellants/claimants prays for enhancement of the compensation suitably.

5. On the other hand, learned counsel appearing for the respondents supported the award impugned and submitted: in the facts and circumstances of the case, the amount of compensation awarded by the Tribunal is just and proper compensation, which does not call for any interference.

6. Heard learned counsel for the parties and perused the material available on record.

7. The fact that the accident had occurred due to sudden reverse of the offending vehicle i.e. Tractor by its driver and that the insurance company is liable for payment of compensation as it could not establish any violation of policy conditions are now not in dispute.

8. The accident had occurred in the year 2017. As per the claim petition, the

deceased was working as labour. He could have earned at least Rs.6,000/- per month in the year 2017 as per labour minimum wages, and therefore, the Tribunal has certainly erred in assessing the income of deceased as Rs.4264/- for 26 days. Therefore, I propose to recompute the amount of compensation by taking into account the income of deceased as Rs.6000/- per month.

9. Thus, from the facts and circumstances of the case and the documents adduced by the respective parties, the monthly income of the deceased can safely be taken as Rs. 6,000/- i.e. 72,000/- per annum.

10. In view of the law laid down in **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680**, considering the age 55 years of the deceased 10% of his annual income is required to be added thereto towards future prospects which comes to Rs.7,200/-. Thus, the annual income of the deceased is calculated at Rs.79,200/-. Since the deceased is survived by his wife and two children after deducting 1/3 from the above amount towards his personal and living expenses, the annual loss of dependency comes to Rs.52,800/-. Further, considering the age of the deceased i.e. 55 years, the applicable multiplier is 11. After applying this multiplier, the total loss of dependency comes to Rs,5,80,800/-. The amount awarded by the Tribunal under the conventional heads of Rs.85,000/- is kept intact. Hence, after adding this amount the total compensation is worked out at Rs.6,65,800/-

11. Since the Tribunal has already awarded Rs.4,97,753/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.1,68,047/-.

12. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimants/Appellants shall be entitled to a total enhanced amount of compensation of Rs.1,68,047/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment. However, rest of the conditions of the impugned award shall remain intact.

10. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh