

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 1155 of 2012**

1. Mus Vibha Tiwari W/o Late Shri Kamendra Tiwari, Aged About 25 Years,
2. Om Tiwari S/o Late Shri Kamendra Tiwari, Aged About 2 Years,
3. Sonjhari Devi W/o Rajendra Prasad Tiwari, Aged About 55 Years,
4. Rajendra Prasad Tiwari S/o Late Ramchandra Tiwari, Aged About 57 Years,
5. Ku. Sangita Tiwari D/o Rajendra Prasad Tiwari, Aged About 17 Years, appellant No.2 minor through legal guardian mother appellant No.1 and appellant No.5 minor through legal guardian father Appellant No.4 R/o Rajkishore Nagar, P.S. Sarkanda, Distt. Bilaspur C.G.

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1. Suresh Kumar Pandey S/o Shri Indramani Pandey, R/o village Batra, Surajpur, Distt. Sarguja C.G. (Owner of alleged vehicle truck C.G.15/AC-0744)
2. Branch Manager Reliance General Insurance Company Limited, Ravi Bhawan, Jai Stambh Chowk, Raipur, Distt. Raipur C.G., through Branch Manager, Reliance General Insurance Company Limited, Bilaspur, Distt. Bilaspur C.G. (Insurer of alleged vehicle truck C.G.15/AC-0744)
3. Ashok Kumar S/o Vishnudeo Thakur Aged About 30 Years, R/o village Tandwa, P.S. Ramuna, Distt. Gardhwa (Jharkhand) (Driver of alleged vehicle truck C.G.15/AC-0744)

-- Respondents

For appellants- Smt. Neeta Choubey, Advocate.
For respondent No.2-Shri Tarkeshwar Nande, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order****20/03/2018**

Heard.

1. Instant petition is for enhancement of the compensation awarded in the award dated 3/09/2012 passed in Claim Case No.06/2012 by the 6th Additional Motor Accident Claims Tribunal, Bilaspur.
2. This is not in dispute that deceased Kamendra Tiwari met with an accident on 24/06/2011 with a truck bearing registration number C.G.-15/A.C.-0744. The learned tribunal has observed that on the date of

accident offending truck bearing registration number C.G.-15/A.C.-0744 was driven in a rash and negligent manner and because of the accident the deceased Kamendra Tiwari died. Thereafter, claim petition was preferred by the wife, minor child, mother, father and sister who were dependents on the deceased. The learned tribunal held notional income of the deceased to Rs.3000/- per month and for loss of future prospect total award of Rs.5,14,000/- was passed. Further it was held that in absence of payment of award interest @ 7.5 % per annum would be paid.

3. Learned counsel for the appellants would submit that the learned tribunal without any reasonable cause has assessed the income of the deceased to Rs.3000/- per month. It is contended that statement is on record of AW-3 wherein it is categorically stated and the document has already been filed to prove that per month income of the deceased was Rs.15000/- as he was discharging the job of supervisor in the company wherein he was employed. It is further submitted that daily register of the attendance, certificate wherein deceased was working was also produced and ignoring the same notional income has been assessed very low, therefore same requires to be re-assessed. It is further submitted that award on the other head appears to be too meager which requires to be enhanced. Learned counsel submits that the compensation so awarded may be enhanced properly.

4. Learned counsel for the insurance company on whom liability has been fastened would submit that order of the court below is well merited which do not call for any interference. He further submits that the learned tribunal has reasonably assessed the income of the deceased to Rs.3000/- per month, therefore no re-appreciation of the evidence is required and appeal deserves to be dismissed.

5. Heard learned counsel for the parties and also perused the documents.

6. In the instant appeal adjudication is confined only with respect to the quantum of the award made since finding with respect to the rash and negligent driving by the driver of the offending truck is not in question. Perusal of the award would show that court has assessed income of the deceased to Rs.3000/- per month. As against this, statement of the wife Vibha Tiwari would show that it is stated that her husband was working with M/s Uttam Singh Sisodiya as supervisor, he was aged about 28 years and was getting Rs.15,000/- per month salary. Suggestion given to this witness that her husband was not working anywhere has been flatly denied and except that nothing has been explored by the respondent.

7. One Sanjeev Pandey AW-3 has been examined to prove income of the deceased. In his deposition he has stated that since 2010 he is working as accountant with M/s Uttam Singh Sisodiya. Copy of the registration of the firm is also proved as Ex.P-13 and Ex.P-13 shows that firm was M/s Uttam Singh Sisodiya was registered with firms and society. The daily attendance register is also been proved as Ex.P-15(C) and perusal of it shows that the deceased was working with the said firm. This witness has also proved the salary register of the firm which is marked as Ex.P-16(C) wherein as against the salary drawn by the deceased Rs.15000/- has been shown for one month. Register would show that for 29 days when he worked he was paid Rs.14,500/- and when he worked for 23 days he was paid Rs.11,500/-. Salary certificate is marked as Ex.P-8 wherein he has been shown to have been paid Rs.15,000/- per month. In the cross examination of this witness nothing substantial has come to fore to deny the same. In the facts of this case, I do not find any reason to agree to the finding of the learned tribunal to assess monthly income of the deceased to Rs.3000/- per month instead after evaluating Ex.P-8 along with the register of payment of salary which remains unrebutted as to the work discharged by the deceased in the opinion of

this court it would be fair to hold income of the deceased to Rs.13000/- per month, thereby annual income comes to Rs.1,56,000/-. In the year 2010-2011 the taxable income was above Rs.1,60,000/-. So the established income would be Rs.1,56,000/-.

8. Perusal of the award would show that learned tribunal has not added any sum towards future prospect. Statement of the wife would show that she has deposed that at the time of the accident deceased was aged about 28 years. It also finds corroboration by the post mortem report Ex.P-5 wherein age of the deceased is shown to be 28 years. Considering the fact that deceased was aged about 28 years at the time of accident and as per the law laid down in case of **National Insurance Company Limited v. Pranay Sethi and others** reported in **AIR 2017 SC 5157**, I think it proper to add the future prospects of 40% over and above the income of Rs.1,56,000/- as it can not be presumed that the deceased could have been stagnant on a place of working and thereby 40% as future prospect comes to Rs.62,400/- and total income after adding future prospect comes to Rs.2,18,400/-. Now coming to the deduction towards personal expenses. Claim petition was preferred by the wife and one minor child and three other dependents. Thereby claim petition was preferred by the five persons as such as per law laid down in case of **Sarla Verma v. D.T.C. (2009) 6 SCC 121** there will be deduction of 1/4th towards personal expenses of the deceased which comes to Rs.54,600/-, thus annual dependency after deducting Rs.54,600/- from Rs.2,18,400/- comes to Rs.1,63,800/-. Age of the deceased has been shown in the postmortem to be 28 years, therefore deceased belong to the age group of 26-30 years and multiplier of 17 would be applicable, therefore total dependency comes to Rs.27,84,600/-.

9. Learned tribunal has awarded Rs.5000/- for funeral expenses, for loss of consortium to the wife Rs.5000/- has been awarded, for loss of

love and affection to the minor child, mother, father and sister of the deceased Rs.5000/- each has been awarded, further for loss of estate Rs.25,000/- has been awarded. Considering the age of the deceased and that of the wife following the principle laid down in case of **National Insurance Company Limited v. Pranay Sethi and others** reported in **AIR 2017 SC 5157** an amount of Rs.40,000/- is awarded to the wife for loss of consortium. Further Rs.25,000/- is awarded to the minor child for loss of love, care and guidance, further for loss of love and affection to mother, father and sister of the deceased enhancement is made to Rs.25,000/- each, for loss of estate Rs.15,000/- is awarded and for funeral expenses amount of Rs.15,000/- is awarded. Thereby, total compensation is re-assessed as follows:-

S.No.	Heads	Calculation
(i)	Notional income @ Rs.13000/- per month	Rs.13000 x 12 = Rs.1,56,000/- per annum
(ii)	40% of (i) above to be added as future prospect	Rs.1,56,000+ Rs.62400 = Rs.2,18,400 /-
(iii)	1/4th of (ii) deducted towards personal expenses of the deceased which comes to Rs.54,600/-, thereby annual dependency comes to	Rs.2,18,400 – Rs.54600=Rs.1,63,800/-
(iv)	Compensation after multiplier of 17 is applied	Rs.1,63,800x17=Rs.27,84,600/-
(v)	For loss of consortium to the wife	Rs.40,000/-
(vi)	For loss of love, care and guidance to minor child	Rs.25,000/-
(vii)	For loss of love and affection to mother, father and sister Rs.25,000/- each total comes to	Rs.75,000/-
(viii)	For loss of estate	Rs.15,000/-
(ix)	For funeral expenses	Rs.15,000/-
	Total	Rs.29,54,600/-

10. Thus the total compensation will be Rs.29,54,600/-. After deducting Rs.5,14,000/- awarded by the tribunal, the enhancement would be Rs.24,40,600/-.

11. In the result, the appeal is partly allowed. The appellants/claimants will be entitled to the said sum of Rs.24,40,600/- in addition to what is already awarded by the claims tribunal with interest @ 9% per annum on the enhanced claim amount from the date of enhancement till the date of its realization.

12. Out of the compensation awarded of Rs.29,54,600/-, Rs.2 lakhs each to be paid to the mother and father whereas sister would get Rs.1 lakh. Rest of the amount would be paid to the wife and minor child. Amount of Rs.13 lakhs would be kept in fixed deposit in any nationalized bank till minor boy attains the age of majority. Amount so enhanced shall be informed to the claimants through para legal workers of the Legal Aid in coordination with the Secretary Legal Services Committee and Secretary District Legal Aid.

Sd/-

(Goutam Bhaduri)
JUDGE