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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 134 of 2017

1. Smt. Chamare Markam Wd/o Late Baisaku, aged about 49 years, R/o Village Jadapadar, P.S. Farasgaon, District Kondagaon, Chhattisgarh
2. Ramesh Markam S/o Late Baisaku, aged about 28 years, R/o Village Jadapadar, P.S. Farasgaon, District Kondagaon, Chhattisgarh, District : Kondagaon, Chhattisgarh
3. Miss Champa Markam D/o Late Baisaku, aged about 25 years, R/o Village Jadapadar, P.S. Farasgaon, District Kondagaon, Chhattisgarh, District : Kondagaon, Chhattisgarh
4. Prakash Markam S/o Late Baisaku, aged about 24 years, R/o Village Jadapadar P.S. Farasgaon, District Kondagaon, Chhattisgarh, District : Kondagaon, Chhattisgarh
5. Jailal Markam S/o Late Baisaku, aged about 22 years, R/o Village Jadapadar, P.S. Farasgaon, District Kondagaon, Chhattisgarh ....Claimants

---- Appellants

Versus

1. Santosh Sahu S/o Shankar Sahu, aged about 30 years, R/o Village Kura Ward No.12 Bajrang Chowk P.S. Dharsinwa District Raipur, Chhattisgarh ....Driver
2. Dilbag Singh S/o D. Singh, C/o R/o Mahendra Travels Pandari Raipur District Raipur, Chhattisgarh ....Owner
3. The Oriental Insurance Co. Ltd., Branch Madin Manjil Kachhari Chowk Jail Road, Raipur, Chhattisgarh ....Insurance Company

---- Respondents

For Appellants : Shri P. K. Tulsyan, Advocate
For Respondent no.3 : Shri Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

15/01/2018

Present is a claimants' appeal under Section 173 of the Motor Vehicles Act assailing the award dated 16.11.2016 passed by the Motor Accident Claims Tribunal, Kondagaon (CG) in Claim Case No. 53 of 2015. Vide the impugned award, the Tribunal, in a death case has awarded a compensation of Rs.33,99,600/- with interest @ 9% per annum from the date of application.

2. Contention of the counsel for the appellants is that the Tribunal has erroneously assessed the income of the Tribunal at Rs.48,100/- whereas the income of the deceased was more than Rs.63,000/- at the time of his death. He submits that the Tribunal should have properly assessed the income at the time of quantifying the compensation taking note of the salary slip of the deceased marked as Ex.P-8. He submits that the deductions made in the instant case was 1/3rd whereas it should have been 1/4th considering the total number of claimants. Likewise, the multiplier applied is 11 whereas it should have been 13. Since the deceased was a permanent employee of the State Electricity Board, the claimants would be entitled for 30% of the income towards future prospects. It is contended by the counsel for the appellants that the finding of the Tribunal in fixing 25% contributory negligence and apportioning the award accordingly is erroneous and bad in law. There has been no evidence whatsoever led by any of the parties with which the Tribunal could have arrived at the finding of contributory negligence. He submits that the Insurance Company has examined only DW-1, the branch manager of the Insurance Company namely Abhay Kumar Sinha and he is totally silent in his evidence so far as contributory negligence is concerned. Thus, prayed for enhancement of the compensation suitably.

3. Counsel for the Insurance Company, however, submits that the Tribunal has taken into consideration the pay slip which has been produced before it and taking into account the net income which is Rs.48,100/-, the compensation has been quantified. Therefore, there is no error on the part of the Tribunal while quantifying the income part. So far as the contributory negligence is concerned, counsel for the Insurance Company submits that it is a case where the Tribunal has reached to the finding on the basis of the evidence come on record particularly the spot map Ex.P-1 which shows that the appellant while crossing main road on his motorcycle was not cautious and the hit was on the left side of the vehicle, therefore, the finding of the contributory negligence is proper, legal and valid.

4. Having heard the contentions put forth on either side when we look into the question of contributory negligence, what clearly reflects is that the finding of the Tribunal is based upon the fact that the accident occurred while the deceased was crossing national highway and that he ought to have been cautious while crossing the road. Except for the said reason, there does not appear to be any other evidence available before the Tribunal with which the finding of contributory negligence could have been awarded. A perusal of the record would show that even the witness examined on behalf of the Insurance Company does not deal with the issue of contributory negligence at all, neither is there any evidence which has come on behalf of the claimants or for that matter the owner of the vehicle showing that there was any negligence much less a contributory negligence on the part of the deceased when the accident occurred.

5. With the aforesaid factual matrix of the case, this Court has no hesitation in reaching to the conclusion that the finding of contributory negligence assessed by the Tribunal seems to be only on assumption and presumption with there being no cogent and substantive piece of evidence. In the absence of any evidence to support the finding of the Tribunal, the assessment of contributory negligence to the extent of 25% attributed upon the deceased deserves to be and is accordingly set aside. It is ordered that the claimant shall be entitled for the entire compensation that would be quantified.

6. As regards the quantum of compensation, perusal of record would show that the gross salary of the deceased was Rs.63,029/- as he was a permanent senior lineman in CG State Electricity Board. The deductions which have been shown in the pay scale Ex. P-8 are towards Provident Fund, Insurance and income tax. PF and Insurance amount are part and parcel of income which the deceased would have ultimately got on his superannuation. Thus, except for the deduction of Rs.4,000/- towards income tax, the rest amount has to be treated as part of income of the deceased. Therefore, deducting Rs.4,000/- under income tax from gross salary, the amount comes to Rs.5,9029 which for quantification purposes is rounded up at Rs.59,000/- a month.

7. Accepting Rs.59,000/- as the monthly income, yearly income would be Rs.7,08,000/- to which if 30% is added towards future prospects, the amount comes to Rs.9,20,400/-. If 1/4th of the said amount is deducted towards personal expenses considering the total number of claimants, the amount would come to Rs.6,90,300/- which if multiplied applying the multiplier of 13, the amount comes to Rs.89,73,900/-. It is ordered that the claimants would be entitled for Rs.89,73,900/- as loss of dependency. In addition, the claimants would also be entitled for Rs.70,000/- under conventional heads. Thus, the claimants shall be entitled for a total compensation of Rs.90,43,900/- in stead of Rs.33,99,600/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

8. The present appeal thus stands allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola