NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 103 of 2012

1. Smt Kunti Bai W/o Late Surendra Kumar Mehar, aged about 24 years.
2. Dhananjay S/o late Surendra Kumar, aged about 6 years.
3. Ku. Nandni D/o later Surendra Kumar, aged about 4 years
4. Ku. Shalini D/o late Surendra Kumar, aged about 2 years
5. Mungeshiya Bai W/o Lalji, aged about 55 years.
   Appellants No. 2 to 4 are minors through mother Kunti Bai.
   All R/o Village Mama Bhancha, P.S. And Tahsil Mungeli District Bilaspur Now District Mungeli (CG).

---- Appellants

Versus

1. Ramesh Kumar S/o Ravi Sahu, age about 30 years, Vehicle Driver New Jeevan Mahindra Bus Service. .
2. M/s New Jeevan Mahindra Bus Servece, Proprietor Vehicle Owner Smt. Sandeep Kaur Gil, R/o New Bus Stand, Pandri, Raipur C.G
3. The Oriental Insurance Co. Ltd. Through The Branch Manger, Branch Office Madina Manjil, Kachahari Chowk, Raipur C.G.

---- Respondents

For Appellant	:	Shri AL Singroul, Advocate.
For Insurance Co.	:	Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

19.02.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimants seeking enhancement of compensation against the award dated 14.09.2011 passed by the Additional Motor Accident Claims Tribunal, Mungeli (in short, the Tribunal) in Claim Case No.77/2011. Vide the impugned award, the Tribunal has awarded compensation of Rs.6,77,950/- along with interest @ 6 percent per annum from the date of application.

2. The insurance company in the instant case has also filed cross objection under Order 41 Rule 22 CPC. The cross objection of the

insurance company is only questioning the quantum of income inasmuch as the income of deceased assessed by the Tribunal is exorbitant and is without any basis and thus prayed for setting aside the award.

3. A perusal of record would show that the insurance company has not led any evidence to substantiate any of its contention before the Tribunal. Neither has the insurance company got permission under Section 170 of the Motor Vehicle Act to defend its case.

4. Under the given circumstances, particularly since there is no evidence on behalf of the insurance company, the cross appeal does not have much force. The same deserves to be and is hereby rejected.

5. So far as the appeal of the claimants is concerned, the income assessed by the Tribunal is Rs.400/- per day and assessment was made taking the income for 22 days i.e. Rs.8800/- per month. The appellants submits that they have led evidence before the Tribunal to establish the income of the deceased at Rs.12,000/- per month which has not been properly appreciated.

6. However, perusal of records would show that the Tribunal has taken into consideration the facts and circumstances of the case and have accepted Rs.400/- as daily income and had calculated the income at Rs.8800/- accepting the number of days that the deceased was working to be 22 days. Thus, there is no illegality committed by the Tribunal in assessing the monthly income at Rs.8800/-. However, the claimants would also be entitled for 40 percent of the said amount

towards future prospects which comes to Rs.3520/-. Thus, the total monthly income of the deceased comes to Rs.12,320/- and Rs.1,47,840/- yearly of which if 1/4th is deducted towards personal expenses, the remaining amount would be Rs.1,10,880/-which if multiplied applying the multiplier of 17, the amount could come to Rs.18,84,960/-. In addition, the claimants shall also be entitled for an additional lump sum compensation of Rs.70,000/- towards conventional heads making total compensation payable at Rs.19,54,960/-.

7. The counsel for the claimants also have challenged the finding of contributory negligence arrived at by the Tribunal contending that it is without any basis and the same deserves to be set aside.

8. The contention of the appellants is that there is no evidence brought on record showing any negligence on the part of the deceased. Moreover, there is no evidence also to show that the deceased was on the wrong side of the road at the time of accident.

9. Under the given facts and circumstances of the case and also keeping in view the judgment of Supreme Court in case of 2013 (10) SCC 695 (Minu Rout and Anr. Vs. Satya Pradyumna Mohapatra & Ors.) and also 2015 AIR SCW 514, Yerramma & Ors. Vs. G. Krishnamurthy & Anr., this court holds that the findings of contributory negligence arrived at by the Tribunal is without any basis and also is without any evidence. More particularly since there is no evidence led by the insurance company in this regard. Accordingly, the findings of contributory negligence stands set aside.

10. The finding of contributory negligence having been set aside by this court, the claimants shall be entitled for the entire amount of compensation i.e. Rs.19,54,960/- instead of Rs.6,77,950/-.
11. The enhanced amount of compensation shall also carry interest at the same rate as has been awarded by the Tribunal.
12. Accordingly, the claimants appeal stands allowed and cross objection filed by the insurance company stands rejected.

13.

Sd/-

(P.Sam Koshy)
Judge

inder