NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 349 OF 2011

1. Mus. Pannavati, aged about 22 years, Wd/o Late Narayan Prasad
2. Ku. Neelam, aged about 3 years, D/o Late Narayan Prasad
3. Ku. Saniya, aged about 1 year, D/o Late Narayan Prasad
4. Mus. Surjaniya Rajware, aged about 60 years, Wd/o Late Ram Lal Rajware

Minor Appellants No. 2 and 3 through their natural guardian- Mother (Appellant No.1)

All R/o Ramnagar, Lingiyadih, P.S. Sarkanda, District Bilaspur (C.G.)

… Appellants

versus

1. Krishnakant Sahu, aged about 23 years, S/o Shri Dwarika Prasad Sahu, permanent R/o Village Mahora, P.S. Patna, District Korea (C.G.), present address- Rajkishore Nagar, P.S. Sarkanda, Tah. and District Bilaspur (Driver).
2. Rohanki @ Rohani Kumar Chaturvedi, aged about 32 years, S/o Late Gopal Chaturvedi, R/o R.K. Provisions Stores, Rajkishore Nagar, Bilaspur, Tah. and District Bilaspur (Owner)
3. Branch Manager, The New Insurance Co. Ltd., Civil Line, Baloda Bazara, through the Divisional Manager, the New India Insurance Company Limited, near Bus Stand, Bilaspur (C.G.) (Insurer)

… Respondents

For Appellants	:	Ms. Neeta Choubey, Advocate.
For Respondent No.3	:	Ms. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/01/2018

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur, vide its award dated 27.10.2010, in Claim Case No. 24/2010.

2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.9,87,184/- to the claimants with interest thereon at the rate of 9% per annum from the date of claim application.

3. Learned counsel for the appellant-claimants assailing the award submits that the Tribunal in the instant case has not taken the income of the deceased properly while quantifying the compensation. She further submits that the deceased in the instant case was a permanent employee of the Central public sector undertaking, South Eastern Coalfields Limited. She further draws the attention of this Court to Exhibits A-8 to A-10 stating that the gross monthly income of the deceased has been shown as Rs. 11,170/- which included the deductions towards the provident fund and contributions towards Life Insurance and submits that the Tribunal has only assessed the income at Rs.6786/- for the purpose of calculating the compensation. It was further contended that the deceased in the instant case since was aged about 29 years at the time of accident, the claimants would also be entitled for 50% of his income towards future prospects. Likewise, the deduction made towards the personal expenses also should be 1/4th instead of 1/3rd as has been done by the Tribunal. She further submits that the compensation awarded under the conventional heads is also on the lower side and therefore it deserves to be enhanced suitably. She thus prayed for a suitable enhancement of the amount of compensation accordingly.

4. Learned counsel for respondent no.3-insurance company however opposing the appeal submits that the award in the instant case seems to be just and reasonable and it does not warrant any interference and thus prayed for the rejection of the appeal as the finding is based on the evidence which have come on record.

5. Having heard the contentions put forth on either side and on perusal of record, undisputedly, the deceased in the instant case was a permanent employee of South Eastern Coalfields Limited and was drawing a gross salary of Rs. 11,170/- per month. Considering the date of accident and the age of the deceased, there would had been a considerable increase in the income of the deceased in due course of time. From the documents, Exhibits A-8 to A-10, it reflects that the gross income includes the deductions made towards the provident fund as also the contribution towards the life insurance by the employer. Both these deductions are also part of the wages for all practical purposes and the benefits arising out of these two deductions would had been payable to the deceased on his superannuation. Thus, considering the facts and circumstances of the case, this Court assesses the monthly income of the deceased at Rs.11,170/- and proceeds to quantify the compensation accordingly.

6. Keeping in view a recent Larger Bench's decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited** v. **Pranay Sethi & Others**[1], the claimants would also be entiteld for 50% of income towards future prospects.

7. Accordingly, accepting Rs.11,170/- as the monthly income of the deceased, the yearly income comes to Rs.1,34,040/- to which if 50%, *i.e.*, Rs.67,020/- is added towards future prospects, the amount would come to Rs.2,01,060/- of which if 1/4th, *i.e.*, Rs.50,265/-, is deducted towards the personal expenses (instead of 1/3rd), the amount would come to Rs.1,50,795/- which if multiplied applying the multiplier of 17, instead of 18, the amount would reach to Rs.25,63,515/- which is the loss of dependency which the claimants are entitled for, instead of Rs.9,77,184/- which the Tribunal has assessed and it is ordered accordingly.

8. In addition, again Keeping in view the case of **Pranay Sethi** (supra), the claimants are also entitled for a lump sum compensation of Rs.70,000/- under conventional heads, instead of what has been awarded by the Tribunal.

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1 SLP (Civil) No. 25590 of 2014, decided on 31.10.2017

9. It is accordingly ordered that the claimants shall be entitled for a total compensation of **Rs.26,33,515/-** instead of Rs.9,87,184/- which the Tribunal has awarded, and the said enhanced amount shall also carry the interest at the same rate as has been fixed by the Tribunal.

10. The appeal stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/