NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 542 of 2011

Mewalal Shiv Kumar Jaiswal, R/o near Narendra Talkies, Jagdalpur, Distt. Bastar (CG).

---- Appellant

Versus

1. Ganju S/o Lakhkhu, aged about 40 years,
2. Durbal S/o Gunju, aged about 7 years (minor) through Natural Guardian, Father Gunju, S/o Lakhkhu,
   Both R/o Village Dhuragaon, Dengpara, PS Lohandiguda, Distt. Bastar (CG).
3. Abdul Karim (wrongly mentioned Karib) S/o Abdul Rahim R/o Kewatpara, Back side of Anupama Talkies, Jagdalpur, Distt. Bastar (CG).
4. The Chief Medical and Health Officer, Jagdalpur, Distt. Bastar (CG).
5. The Director, Health Services, Chhattisgarh Raipur (CG).
6. State of Chhattisgarh through Collector, Bastar at Jagdalpur (CG).

---- Respondents

For Appellant-Owner	:	Shri Subhash Yadav, Advocate.
For Claimants	:	Shri P.K. Tulsyan, Advocate.
For State	:	Ms. M. Asha, Panel Lawyer.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

31.01.2018

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the owner against the award dated 21.01.2011 passed by the IIIrd Additional Motor Accident Claims Tribunal Bastar at Jagdalpur, in Claim Case No. 246 of 2009. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.2,13,600/- along with interest @ 6 percent per annum from the date of application.
2. Learned counsel for the appellant-owner submits that the Tribunal has wrongly fastened the liability upon the present appellant

inasmuch as he is not the actual owner of the vehicle. He submits that it is a case where the vehicle involved in the accident i.e. Jeep bearing Registration No.MP-02-1814 (Re-numbered as CG-02-J-2226) was originally owned by the State Govt. which was subsequently put to auction and in the auction proceeding it was purchased by one Abdul Shamim and that he has also led evidence in this regard to establish that it was Abdul Shamim who was the actual owner and he was neither directly or indirectly involved in purchase or use of the said vehicle. He referred to Annexure A/2 enclosed along with memo of appeal which is also exhibited as Annexure-C-32 before the Tribunal to show that it is infact a case where the documents which are relied upon by the Tribunal were not one belonging to the appellant, but was prepared in the name of appellant by some unknown person. He is not aware of such papers being filed before the State authorities during auction proceedings.

3. A perusal of record would show that there were two documents produced before the Director of Health Services during the course of auction. The first document was Annexure C-32 which was filed by the appellant Mewalal Shiv Kumar Jaiswal wherein he has deposited Rs.25,000/- by way of Bank Draft for the purchase of four vehicles which included the vehicle involved in the present case i.e. MP-02-1814 (Re-numbered as CG-02-J-2226). It is also reflected from the proceedings that document Annexure C-32 is a document prepared by the present appellant for the purpose of taking possession of the said vehicle after the auction was complete.

4. Given the said evidence from the Heath Department, this court is of the opinion that there was sufficient material and evidence during the course of hearing with which it could be safely concluded that it was the present appellant Mewalal Shiv Kumar Jaiswal who was the actual owner of the auctioned jeep. Thus, the contention put forth by the appellant-owner does not have sufficient force. Neither is there any substantive cogent evidence on record with which the findings of the Tribunal has to be disbelieved. Thus, the owner's appeal being devoid of merit is liable to be and is hereby rejected.
5. So far as cross objection filed by the claimant under Order 41 Rule 22 CPC seeking enhancement of compensation is concerned, the contention of the claimants is that the claimants have not been granted sufficient compensation. The income assessed by the Tribunal, so also the income under future prospects have not been properly assessed. The claimants would be entitled for substantial amount under the conventional heads which again has not been awarded by the Tribunal and for all these reasons, he prays for enhancement of compensation.
6. However, the counsel for the appellant-owner opposes the cross objection and submits that the findings of the Tribunal so far as quantum is concerned, does not warrant any interference as the same is passed on the basis of evidence which have come on record.
7. Having heard the contentions put forth by the counsel for the claimant, indisputably the date of accident is December, 2005. During the said period even an unskilled labour would had been earning

more than Rs.100/- per day which would bring the monthly income at Rs.3000/- and Rs.36000/- annually. Thus, considering the period of accident this court assesses the monthly income of the deceased at Rs.3000/- and Rs.36000/- annually instead of Rs.21600/- as assessed by the Tribunal.

8. Keeping in view the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimants shall also be entitled for 40 percent of the income towards future prospects.

9. Accordingly, accepting the monthly income of the deceased at Rs.3000/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.4200/- i.e. Rs.50,400/- yearly, of which if 1/3rd is deducted towards personal expenses, the income would come to Rs.33,600/-, which if multiplied applying the multiplier of 16, the compensation would reach to Rs.5,37,600/-. Thus, it is ordered that the claimants shall be entitled for Rs.5,37,600/- for loss of dependency. The claimants shall also be entitled for a lump sum compensation of Rs.70,000/- under conventional heads making the total compensation payable to the claimants at Rs.6,07,600/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.6,07,600/- instead of Rs.2,13,600/- as awarded by the Tribunal.

10. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.

11. Accordingly, the appeal filed by the owner i.e. MAC No. 542 of 2011

is dismissed. However, the cross appeal filed by the claimants stands allowed and the award stands modified accordingly.

Sd/-
(P. Sam Koshy)
Judge

inder