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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 310 of 2013

- Smt. Durgeshwari W/o Late Lokesh Dhruv Aged About 27 Years R/o Garhdongri, P.S. And Tah. Nagri, Distt. Dhamtari C.G.
- Ku. Mitali D/o Late Lokesh Dhruv Aged About 1 Years Minor, Thru- Mother Smt. Durgeshwari, R/o Garhdongri, P.S. And Tah. Nagri, Distt. Dhamtari C.G.
- Smt. Revti W/o Late Kapil Dhruv Aged About 49 Years Minor, Thru- Mother Smt. Durgeshwari, R/o Garhdongri, P.S. And Tah. Nagri, Distt. Dhamtari C.G.

----Appellants

Versus

- Radheshyam Yadav, S/o Lal Bahadur Yadav Aged About 28 Years R/o New Police Line, Durg, Block No. 1, Qtr.No. 35, Durg, P.S. Durg, Chhattisgarh
- Radheshyam Agrawal S/o Late Khushi Ram Agrawal Aged About 50 Years R/o Hirapur Road, Near Chhattisgarh Public School, Telibandha Raipur, P.S. Telibandha, Distt. Raipur C.G.,
- National Insurance Co. Ltd. S/o Branch Office Tatibandh Business, Centre, Infront Of Bharatmata School, Telibandha, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants : Shri D.Kushwaha, Advcoate on behalf of Shri Pushpendra Patel.
For Respondent No.1 & 2 : None present.
For Respondent No.3/Insurance Company : Shri Sudhir Agrawal, Advocate

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Hon'ble Smt. Justice Rajani Dubey

Order On Board

01/12/2018

This appeal arises out of award dated 16.01.2013 passed by the Motor Accident Claims Tribunal, Dhamtari CG (for short 'The Tribunal') in claim case No. 176/2011, whereby awarding a compensation of Rs. 3,49,000/- in favour of claimant with interest @ 6% per anum.

2. Claimants/appellants 1 to 3 herein, are widow, minor child and mother of deceased Lokesh Dhruv who died in road accident on 08.04.2011.

3. As per claimants, on the date of incident when deceased Lokesh Dhruv was coming towards his village from his motorcycle along with Shiv Nishad, said motorcycle was dashed by a pickup bearing Registration No. CG)$JB4081 (hereinafter referred to as 'Offending vehicle') as a result of which Lokesh Dhruv died on the spot itself. At the time of death, deceased Lokesh was 32 years of age, was working as Manager at Petrol Pump Sihawa and drawing salary of Rs. 5,000/- per month. The claim petition was filed by the claimants with the aforesaid pleadings for grant of compensation of RS. 12,70,000/- against the death of Lokesh Dhruv under various heads.

4. Learned Tribunal by the impugned award granted a total compensation of Rs. 3,49,000/- along with interest @ 6% per annum in favour of the claimants.

5. Counsel for the appellants/claimants submits that the compensation awarded by the Tribunal under all the heads is on the lower side and needs to be enhanced suitably. He submits that the monthly income of the deceased was Rs. 5,000/- but the tribunal has wrongly taken it as Rs. 3,000/- per month.

6. He further submits that the Claims Tribunal failed to see that the claimant has examined the witnesses and has proved their case therefore the entire claim ought to have been decreed in favour of the claimants, the respondents have not produced any evidence and not discarded the evidence put by the appellants/claimants that learned claims Tribunal has not properly awarded compensation in various heads and also wrongly applied the multiplier. He further submits that learned claims tribunal has not properly calculated the income and wrongly made the deduction towards dependency.

7. On the other hand, counsel for respondent No.3/Insurance Company supports the award impugned and submits that the compensation awarded by the Tribunal is just and reasonable.

8. Heard counsel for the parties and perused the documents on record.

9. The claimant has not filed anything on the basis of which it could be said that the monthly income of the claimant was Rs. 5,000/- and in these circumstances, the Tribunal has taken a view in determining his monthly income as Rs. 3,000/-.

10. The claimants have pleaded the income of the deceased as Rs. 5,000/- per month. Considering the age of the deceased i.e. 32 years, and as per the evidence adduced by the appellants/claimants which shows that the deceased was working at the Petrol Pump as Manager, the minimum wage of skilled labour is Rs. 4,000/- per month at the relevant time whereas the income considered by the

learned Tribunal is Rs. 3,000/- per month which is on the lower side and as per decision of the Apex Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the learned Tribunal took the income of the deceased to be that of an unskilled worker and on that basis awarded the compensation to the family members of the deceased. Thus, after adding 30% of Rs.1,200/-, the monthly income of the deceased comes to Rs.5,200/- i.e. Rs.62,400/- per annum. Looking to the number of claimants, 1/3rd is required to be deducted towards personal and living expenses of the deceased. After making such deduction, 1/3rd towards annual income (Rs. 62,400/-- - Rs. 20,800/-) is Rs. 41,600/-, the annual loss of dependency comes to Rs. 41,600/- x16 = Rs. 6,65,600/-. Since at the time of death, the deceased was aged about 32 years, after applying multiplier of 16 instead of 14, as has been done by the Tribunal, total loss of dependency comes to Rs. 6,65,600/- . there is required to be addition of 30% of his actual salary to the actual salary towards future prospects. As such, the claimants are entitled for compensation in the following manner :

Sl. No.	Head	Calculation
1.	Income of the deceased	Rs. 4,000/- per month i.e. Rs. 48,000/- per annum
2.	30% towards future prospects added to annual income	(30% of Rs. 48,000/- +Rs.14,400/-) Rs. 62,400/- per annum
3.	1/3rd deduction towards future prospects added to annual income	Rs. 62,400/- - Rs. 20,800/- Rs. 41,600/-
4.	Multiplier of 16 applied for assessing total loss of dependency	Rs. 41,600/- x16= Rs. 6,65,600/-

5.	Towards Conventional heads (loss of estate, loss of consortium, funeral expenses and loss of estate)	Rs. 50,000/-
	Total	Rs. 7,15,600/-

11. Since the Tribunal has already awarded Rs. 3,49,000/-, after deducting the same from the above amount, the Claimants are held entitled for additional compensation of Rs. 3,16,600/-.

12. In the result, the appeal is allowed in part and the award impugned is modified to the extent that the Claimants/appellants shall be entitled to a total amount of compensation of Rs. 3,16,600/- with a payment of interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment. Amount received by the claimants, if any, shall be adjusted in the enhanced sum.

Sd/-
(Rajani Dubey)
Judge

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3. Considering the age of the deceased, there has to be addition of 30% to the monthly income towards future prospects thus after adding 30%, the monthly income of the deceased comes to Rs.14,400/-. However, the Tribunal has not awarded any amount towards the future prospects. as per decision of the Apex Court in the matter of ***Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another (2009) 6 SCC 121,*** there is required to be addition of 50% of his actual salary to the actual salary towards future prospects Thus, under the

So far as the award is concerned, the claimants have pleaded income of the deceased as Rs. 4,000/- per month. Admittedly, the Tribunal has not awarded any amount towards future prospects. Since at the time of death the deceased was aged about 32 years, and was working as Manager in the Petrol Pump, as per decision of the Apex Court in the matter of ***Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another (2009) 6 SCC 121,*** there is required to be addition of 50% of his actual salary to the actual salary towards future prospects. Thus, after adding 30% of Rs.1,200/-, the monthly income of the deceased comes to Rs.5,200/- i.e. Rs.62,400/- per annum. Looking to the number of claimants, 1/3rd is required to be deducted towards personal and living expenses of the deceased. After making such deduction 1/3rd towards annual income (Rs. 62,400/-- - Rs. 20,800/-) is Rs. 41,600/-, the annual loss of dependency comes to Rs. 41,600/- x16 = Rs. 6,65,600/-. Since at the time of death, the deceased was aged about 32 years, after applying multiplier of 16 instead of 14, as has been done by the Tribunal, total loss of dependency comes to Rs. 6,65,600/- .

Under the conventional heads the Tribunal has awarded Rs. 24,000/- which according to the considered opinion of this Court appears to be highly unreasonable and the same is hereby enhanced to a lump sum of Rs. 50,000. Thus, the total compensation for which the appellants/claimants are entitled comes to Rs. 7,15,600/ -. Since the Tribunal has already awarded compensation of Rs.3,49,000/-, after deducting the same, the appellants/claimants are held entitled for additional compensation of Rs.3,16,600/-. This additional amount of compensation shall carry interest at the rate of 6% per annum from the date of application.

Accordingly, the appeal is allowed in part.

(Rajani Dubey)
Judge