NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 297 of 2013

1. Lakhan Lal S/o Holsay Verma, age 45 year.

2. Pramila Bai W/o Lakhan Lal Verma, aged 44 year.

3. Ku. Anju D/o Lakhan Lal Verma, age 17 year.

4. Ku. Kiran D/o Lakhan Lal Verma, age 15 year.

Appellant No. 3 & 4 are minor hence impleaded through their father/their natural guardian Appellant No.1 Lakhan Lal Verma.

All R/o village Guma via Grasim, Raipur, District Raipur (C.G.)

---- Appellants

Versus

1. Sanjay Kumar Dewangan S/o Puna Ram Dewangan, Permanent Add. village Kesali, via Arang, P.S. Arang, District Raipur (C.G.).

Presently R/o Pahadi Chowk, Gudhiyari, Raipur, (Dewangan Para Hari Janghel's rented house), P.S. Gudhiyari, Raipur, District Raipur (C.G.)

2. M/s Atul Gas Through : Incharge Officer, M/s Atul Gas, R/o 70-A Industrial Area, Nandini Road, Bhilai, District Durg (C.G.)

3. Reliance General Insurance Co. Ltd. Through : In-charge Officer, Reliance Gen. Ins. Co. Ltd. Ravi Bhavan, Jaistambh Chowk, Raipur, District Raipur (C.G.)

---- Respondents

For Appellants	:	Shri Amiyakant Tiwari, Advocate.
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Rohitaswa Singh on behalf of Shri N.K. Thakur, Advocate.

Hon'ble Smt Justice Rajani Dubey

Order On Board

01/12/2018

1. This appeal arises out of the award dated 17.08.2012 passed by 3rd Motor Accident Claims Tribunal (for short the "Tribunal") Raipur, in Claim Case No.01/2009 awarding a compensation of Rs.8,95,536/- with interest @ 6% per annum, in favour of the appellants/claimants for the death of Ashish Kumar Verma.

2. Facts of the case in brief are that on 28.12.2007 at 10.30 PM, near K.K. Road, Subhash Nagar, the deceased, aged about 25 years, was dashed by offending vehicle bearing registration No.CG-07-ZD-1030 which was being driven by respondent No.1 herein in a rash and negligent manner, as a result of which Ashish Kumar Verma died on the spot. A claim petition was filed by the appellants/claimants who happen to be the legal heirs (father, mother and sisters) of the deceased claiming a compensation of Rs.33,40,000/- *inter alia* pleading that the deceased died due to negligent driving of the offending vehicle, at the relevant time he was aged about 25 years, working as Engineer in Godavari Power & Ispat Company Ltd, Siltara and his monthly gross salary was Rs.11,200/- per month.

3. Pleading of the claimants have, however, been denied by

the respondent/insurance company.

4. After evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs.8,95,536/- along with interest @ 6% per annum in favour of the appellants/claimants taking the net income of the deceased as Rs.8,292/- per month and applying the multiplier of 18 and deducting 1/2 towards his personal expenses. Hence this appeal for enhancement.

5. Counsel for the appellants/claimants submits that the compensation awarded by the Tribunal is on the lower side and needs to be enhanced suitably. He further submits that monthly income of the deceased was Rs.11,200/- but the Tribunal has wrongly taken it as Rs.8,292/- per month. According to counsel for the appellants/claimants, the Tribunal has further committed an error in considering the nature of job of the deceased, which was permanent in nature, qualification of the deceased and also failed to add further 30% of the income as future prospect as per the ratio laid down in the case of ***Santosh Devi v. National Insurance Co. Ltd.***[1]. The appellants/claimants have duly proved the gross income of the deceased as Rs.24,000/- and net income as Rs.11,200/- per month vide Ex.P/10, P/11, P/26 and P/27, therefore, the learned Tribunal has committed gross error in holding the net salary of the deceased as Rs.8,292/- per

1 2012 (6) SCC 421

month.

6. On the other hand, it has argued on behalf of the counsel for respondent No.3 that in the facts and circumstances of case, the compensation awarded by the Claims Tribunal is just and proper and requires no further enhancement.

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

8. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

9. Now this Court shall examine as to whether the compensation of Rs.8,95,536/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

10. From the pleadings of the respective parties and the overall evidence on record it is clear that the accident occurred with the offending vehicle which was insured with respondent No.3 and was being driven by respondent No.1. Evidence further goes to show that offending vehicle was being driven in rash and negligent manner. The appellants/claimants have filed salary slip (Ex.P/26) of the

deceased for the month of December, 2007, which shows monthly salary of Rs.11,200/-. In the light of decision of Hon'ble the Supreme Court in the matter of ***Santosh Devi (Supra),*** while calculating the salary of the deceased, only the gross salary is to be calculated and not net salary. Thus, the monthly gross salary of Rs.11,200/- as pleaded and proved by the claimants is taken as it is. Annual income of the deceased thus comes to Rs.1,34,400/-.

12. Accordingly, the monthly income of the deceased is taken to be Rs.11,200/- which makes the annual income as Rs.1,34,400/-. The deceased was 25 years old at the time of accident. Hence, future prospects at 40% of the actual income of the deceased is required to be taken, thus, the amount comes to Rs.53,760,/- (40% of 1,33,400/-). Further, after deducting 1/2 towards the standard deduction on the deceased himself, the annual loss of dependency comes to Rs.94,080/- [50% of (1,34,400/- + 53,760/- = 1,88,160/-)] which by applying the multiplier of 18 rises to Rs.16,93,440/- as the total loss of dependency which the deceased must have spent on the dependents. The Tribunal has not awarded any amount under the heads loss of future income, loss of love and affection, funeral expenses, loss of estate etc. The Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. v. Pranay Sethi[2],*** dealt with the various heads under which compensation is to be awarded in a death case.

2 (2017) 16 SCC 680

Thus, keeping in view all these things, above discussion and in view of decisions of Hon'ble Supreme Court in the matter of ***Santosha*** and ***National Insurance (supra),*** this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The claimants/appellants are entitled for compensation in the following manner:-

Head	Compensation awarded
Income	Rs.11,200/-
Future Prospect	Rs.4,480/- (i.e. 40% of the income)
Deduction towards living and personal expenses	Rs.7840/- [i.e. 1/2 of (Rs.11,200 + Rs.4,480)]
Total income	Rs.7,840/- (1/2 of 11,200 + 4,480)
Yearly income	Rs.94,080/- (Rs.7840/- x 12)
Multiplier applied	18
Loss of future income	Rs.16,93,440/- (Rs.7,840/- x 12 x 18)
Loss of love and affection, funeral expenses and loss of estate.	Rs.50,000/-
Total compensation awarded	**Rs.17,43,440/-**

12. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.17,43,440/- i.e. (16,93,440/- + 50,000/-) rounded off at Rs.17,43,500/- for

which the claimants are entitled to receive as compensation, is just and proper, for the death of deceased Ashish Kumar. Since the Tribunal has already awarded Rs.8,95,536/-, after deducting the same the claimants/appellants are entitled for enhanced amount of Rs.8,47,964/-. This additional amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. The amount received by the claimants, if any, shall be adjusted in the enhanced sum.

13. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/-

(Rajani Dubey)
Judge

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