

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 436 of 2014

1. Kashiram Satnami S/o Late Fuduram Aged About 45 Years R/o Ghathapani, P.S. Chilfi, Tah. Lormi, Distt. Bilaspur, Chhattisgarh
 2. Lalit Kumar S/o Kashiram Satnami Aged About 19 Years R/o Ghathapani, P.S. Chilfi, Tah. Lormi, Distt. Bilaspur Chhattisgarh
 3. Ranjit Kumar S/o Kashiram Satnami Aged About 17 Years Minor, Thru- Father Kashiram Satnami, R/o Ghathapani, P.S. Chilfi, Tah. Lormi, Distt. Bilaspur Chhattisgarh
 4. Ku. Sarita D/o Kashiram Satnami Aged About 14 Years Minor, Thru- Father Kashiram Satnami, R/o Ghathapani, P.S. Chilfi, Tah. Lormi, Distt. Bilaspur, Chhattisgarh
- Appellants**

Versus

1. Girish Mahobiya S/o Narottam Ram Mahobiya Aged About 31 Years R/o Ganganagar, Kawardha, Tah. & Distt. Kabirdham C.G., Chhattisgarh
 2. Satya Prakash Singh S/o Khelan Singh Thakur R/o Jhirpani Colony, Bandhatola, District : Kawardha (Kabirdham), Chhattisgarh
 3. Branch Manager S/o Reliance General Insu.Co.Ltd., Ravi Bhawan, Jai Stambh Chowk, Raipur, Distt. Raipur Chhattisgarh
- Respondents**

For the appellants	:	Mr. Ashish Gupta, Advocate.
For the Respondent	:	Mr. N. K. Thakur, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

17.04.2018

1. The present appeal is against the award dated 11th March 2014 passed in Claim Case No.67/2009 by the Motor Accident Claims Tribunal Kawardham Chhattisgarh whereby the tribunal has awarded Rs.2,67,000/- The claimants filed Claim Case No.67/2009 seeking a total compensation of Rs.7,45,000/- on all heads.
2. As per the case of claimants on 16.04.2009 at about 9 p.m., deceased Geeta Bai along-with others was going by the side

of the road side to answer the call of nature along-with others. While they were going on foot, one Bolero vehicle bearing No. C.G.09/5075 being driven by non-applicant No.1 in rash and negligent manner dashed Kanchan Bai, Amrautin Bai & Geeta Bai and thereafter fled away. It was stated that due to impact of accident, Geeta Bai died on the spot and other two ladies sustained injuries. At the time of incident, Geeta Bai was aged about 42 years and was working as labour and used to earn Rs.100/- per day. The claim petition was filed by the husband and 3 children being claimants/dependants of the deceased Geeta Bai.

3. During the course of trial, while adjudicating the case the learned Tribunal has found that the incident happened due to rash and negligent driving of the offending vehicle and it is also not disputed that the was driven by respondent No.1, owned by Non-Applicant No.2 Satyaprakash Singh and was insured by N.A.No.3 Reliance General Insurance Company Ltd. The tribunal after evaluating the facts awarded Rs.2,67,000/- to the claimants. The instant appeal has been filed only for enhancement of the award.
4. Learned counsel for the appellants submits that the Tribunal has not properly taken into account the income of the deceased and though the accident happened in the year 2009, the amount of Rs.100/- per day has not been correctly assessed which should be suitably enhanced, therefore, the appeal is confined only to enhancement of quantum.
5. A perusal of the award would show that the learned court below has assessed the notional income of the deceased as Rs.30,000/- per year by taking the monthly income as

Rs.2500/-.

6. Considering the fact that the incident happened in the year 2009 if the provisions of Second Schedule as provided in sub-section (3) of Section 163-A of the motor Vehicles Act are looked into, it has fixed the notional income to the extent of Rs.15,000/- in the year 1994. As the central Government has failed to amend the second schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicles Act, the Courts/Tribunal can take the judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of second schedule in the year 1994 and the date of incident in the given case.
7. Here in the instant case as has been stated by the claimants that the deceased was daily wager as also self employed, it can always be presumed that that the deceased used to earn Rs.100/- per day which cannot be stated to be inflated and thereby the amount of Rs.3000/- per month can be accepted as the notional income and accordingly the annual income would come to Rs.36,000/- per year. Further the deceased was stated to be self-employed and at the time of death she was aged about 42 years, which is also corroborated by postmortem report Ex.A-4. Applying the principles laid down in case of ***National Insurance Company Limited v. Pranay Sethi and others reported in AIR 2017 SC 4157***, I think it proper to add future prospects of 25% over and above the income of Rs.36000/- as it cannot be presumed that the income of deceased would not have been stagnant due to increase in wages from time to time. Thus by adding 25% of the income

i.e., Rs.9000/- towards future prospects, the total notional income is worked out to Rs.45,000/- per year (Rs.36000 plus 9000).

8. Now coming to the personal expenses, the claim petition was preferred by the husband and 3 children and there is no evidence on record to show that they were not dependants on the deceased, therefore, as per the law laid down in case of *Sarla Verma Vs. D.T.C (2009) 6 SCC 121*, there will be deduction of 1/4 towards personal expenses of the deceased which comes to Rs.11,250/-. After deducting the personal expenses of Rs.11,250/-, the annual dependency comes to Rs.33,750/- (45000 - 11250). As per the postmortem report, the deceased was aged about 42 years, therefore, she belonged to the age group of 41 to 45 years and thus the multiplier of 14 would be applicable. After applying the multiplier 14, the total dependency comes to Rs.4,72,500/-.
9. Learned Tribunal has awarded Rs.2000/- for funeral expenses and Rs.5000/- for loss of consortium and loss of love and affection for three children which appears to be very meagre and requires to be enhanced. Considering the age of deceased, an amount of Rs.40,000/- is awarded to the husband for loss of consortium. Further Rs.25,000/- each i.e., total Rs.75,000 for three children is granted for loss of love and affection as also for care and guidance. Another Rs.15,000/- is also awarded for loss of estate. In addition, funeral expenses granted by the Tribunal i.e., Rs.2000/- is enhanced to Rs.15,000/-, thereby, the total compensation is reassessed as follows:

S.No.	Heads	Calculation
(I)	Notional income @ 3000 per month	36,000
(ii)	25% of (I) above to be added as future prospects	36000 + 9000 = 45,000
(iii)	1/4th of (ii) deducted as personal expenses which comes to Rs.11,250, thereby the annual dependency comes to	45,000-11,250 = 33,750
(iv)	Compensation after multiplier 15 is adopted thereby the total dependency comes to	33,750 x 14 = 4,72,500
(v)	Loss of consortium for husband	40,000
(v)	Loss of love and affection, care and guidance to 3 minor children @ Rs.25,000/- each	75,000
(vi)	Loss of estate	15,000
(vii)	Funeral expenses	15,000
		6,17,500/-

10. Thus the total compensation will be Rs.6,17,500/- After deducting Rs. 2,67,000/- awarded by the tribunal the enhancement would be Rs.3,50,500/-
11. In the result, the appeal is partly allowed. The appellants/claimants will be entitled to the said sum of Rs. 3,50,500/-, in addition to what is already awarded by the claims tribunal with interest @ 9% per annum on the enhanced claim amount from the date of enhancement/ receipt of certified copy of this judgment/order till the date of its realization.
12. Out of the total compensation awarded of Rs.6,17,500/-, Rs. 3 lakhs shall be paid to the husband whereas the other 3 claimants are entitled to receive the rest of amount in equal proportion which may be kept in a fixed deposit in any nationalized bank for a period of 3 years.
13. The amounts so enhanced shall be informed to the claimants through para-legal workers of the Legal Aid in coordination

with the Secretary Legal Services Committee and Secretary
District Legal Aid.

Sd/-
GOUTAM BHADURI
JUDGE

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