NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 196 of 2014

1. Smt. Ankita Panigrahi Wd/o. Late Parmeshwar Panigrahi aged about 20 years;
2. Suryakant Panigrahi S/o. Late Ramgovind aged about 55 years;
3. Smt. Keshabai W/o. Suryakant Panigrahi, aged about 50 years;
4. Master Thalesh Kumar Panigrahi S/o Late Parmeshwar Panigrahi aged about 0 years (during the pendency of proceeding birth)

   Appellant's No. 4 is minor through his mother Smt. Ankita Panigrahi (Appellant No. 1)

   All are Residence of Khaspara Nandpura Post Baniyagaon P.S. Bhanpuri District- Bastar (C.G.).

---- Appellants

Versus

1. Sushil Kumar Verma S/o Biharilal Verma aged about 28 R/o Near B.R. Cold Store Jagdalpur District Bastar (C.G.) (Driver)
2. Mahboob Khan S/o Hukumdar Khan R/o. Rout Para Jagdalpur District- Bastar (C.G.)(Owner)
3. Bharati Axa General Insurance Co. Ltd. By: Branch Manager First Floor The Firms Icon Survey No. 28 Next to acme Ballet Doddanekudi off outer ring road Banglore- 560037 (Insurer).

---- Respondents

For Appellant : Shri Praveen K. Tulsyan, Advocate
For Respondents No. 3 : Shri P. Acharya, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

04.12.2018

1. This is claimants' appeal for enhancement of compensation

awarded by First Addl. Motor Accident Claims Tribunal, Bastar at Jagdalpur (for short 'the Tribunal') in claim case No. 23/2013 vide award dated 13.09.2013.

2. As against compensation of Rs. 7,75,000/- claimed by unfortunate wife, son and parents of deceased Parmeshwar Panigrahi by filing claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 11.01.2012, the Tribunal has awarded a total sum of Rs. 4,74,000/- as compensation along with interest @ 6 percent per annum from the date of accident till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led, held : the accident occurred due to rash and negligent driving of Truck bearing registration No. C.G. 17 H.-1834 by its driver i.e. respondent No. 1-Sushil Kumar Verma; Parmeshwar Panigrahi died on account of injuries sustained by him in the said accident; respondent Nos 1, 2 & 3/insurance company liable for payment of compensation to the claimants as it could not establish violation of policy conditions; and assessed and awarded aforesaid sum a compensation to the claimants.

4. Brief facts of the case, as per claim petition, are that on 11.1.2012 at about 10pm near Sonarpal Chapka turning national highway No. 30 respondent No. 1-Sushil Kumar Verma while driving the offending vehicle truck bearing registration No. CG17H/1834 rashly and negligently, dashed the motorcycle, which was being driven by deceased, as a result of which Parmeshwar Panigrahi sustained several injuries and died on the spot.

5. Learned counsel for the appellant submits that the deceased was aged about 32 years at the time of accident, therefore, the multiplier should be considered as per Second Schedule appended to Section 163-A of MV Act but learned Tribunal has erred in applying the multiplier of 16 in place of 17. He would further submit that the learned Tribunal has assessed the income of the deceased to be Rs. 27,000/- per annum whereas the deceased used to earn Rs. 40,000/- per annum, therefore, he submits to re-compute the same by applying the multiplier of 17 in place of 16 and assessing the income of the deceased as Rs.40,000/- per annum instead of Rs.27,000/- as assessed by the Tribunal for the purpose of computation of compensation. He placed reliance on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*** in support of his case.

6. Per contra, learned counsel appearing on behalf of the Insurance Company opposes the same and would submit that order passed by the Tribunal is well merited, which do not call for any interference.

7. I have heard the parties and perused the record and the award impugned.

8. It is an admitted position that at the time of accident the deceased aged about 32 years and used to earn Rs. 40,000/- per annum by repairing work of bicycle and running grocery shop.

9. In order to come to a finding of notional income, the reference is made to Section 163-A of the Motor Vehicle Act. For the sake of brevity,

Section 163-A is reproduced hereinbelow:

"163-*A. Special provisions as to payment of compensation on structured formula basis.*-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Xxx xxx xxx

(2) in any claim for compensation under Sub-Section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time, amend the Second schedule."

10. The above quoted Sub-section (3) of Section 163-A of the Act mandate the Central Government to amend the Second Schedule from time to time keeping in view the cost of living.

11. Now in the present case, the accident occurred in the year of 2012 Therefore, if the hike in price of essential commodities and cost of living during the 1994 and 2012 are taken into consideration the notional income, in the opinion of this Court, the income of the deceased can be considered as Rs. 40,000/- per annum.

12. Further the learned Claims Tribunal taken multiplier of 16 looking to the age of the deceased i.e. 32 years, keeping in view of decision of Supreme Court in **Sarla Verma** (supra), has rightly been considered. Further in view of judgment of the Supreme Court in **Pranay Sethy** (supra), 40% of the yearly income of the deceased employee should be added for the purpose of computation of compensation and further Rs.70,000/- should be given towards incidental heads. Thus, claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased	Rs.40,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs.40,000/- +Rs.16,000/- = Rs.56,000/-
03.	1/3th deduction towards personal and living expenses of the deceased	Rs.56,000-Rs.18,666/- = Rs.37,333/-
04.	Multiplier of 16 to be applied	Rs.37,333 x 16= Rs.5,97,328/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total compensation	**Rs.6,12,328/-**

Since the Tribunal has already awarded Rs.4,74,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,38,328/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

13. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-

Gautam Chourdiya
Judge

Amita