NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 314 of 2013

1. Smt. Santwana Chakravarty W/o Late lAbhishek Chakravarty, aged 29 years, Occupation - House Wife.

2. Ku. Shreya Chakravarty D/o Late Abhishek Chakravarti, aged 2 years and 6 months, Minor girl appellant No.2 through - her guardian mother appellant No.1-Santwana Chakravarty (wrongly typed Santona in cause title)

Both R/o village - M.I.G. -27 maruti enclave, Tati Bandh, Raipur (C.G.)

---- Appellants

Versus

1. Nirmal Sahu S/o Chait Ram Sahu, Occupation - Driver, R/o village - Shiv Nagar, Near Shiv Mandir, Rajnandgaon, Tahsil & District Rajnandgaon (C.G.)

2. Saurabh Kothari S/o Kamal Kothari, Occupation - Vehicle Owner, R/o village Kothari Krishi Kendra, Ganj Chowk Rajnandgaon, Tahsil & District Rajnandgaon (C.G.)

3. I.C.I.C.I. Lombard General Insurance Company Ltd. Through - Branch Manager, Branch Office Third Flore, Lal Ganga Shopping Mall, G.E. Road Raipur, District - Raipur (C.G.)

---- Respondents

For Appellants	:	Shri Pawan Kesharwani, Advocate.
For Respondent 1	:	None
For Respondent 2	:	Shri Sachin Singh Rajput, Advocate.
For Respondent 3	:	Shri P. Acharya with Amrito Das, Advocates

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Hon'ble Smt Justice Rajani Dubey

Order On Board

06/12/2018

1. This appeal arises out of the award dated 21.02.2013 passed by 4th Additional Motor Accident Claims Tribunal (for short the "Tribunal") Raipur, in Claim Case No.27/2012 awarding a compensation of Rs.9,54,080/- with interest @ 6% per annum, in favour of the appellants/claimants for the death of Abhishek Chakravarty.

2. Facts of the case in brief are that on 08.08.2009 at about 6.30 AM, when Abhishek Chakravarti was returning on his Scooter bearing registration No. MP-19-E-3040 to his house Maruti Enclave after taking milk from Pillai Dairy, he was dashed by offending vehicle bearing registration No.CG-08-E-0009 which was being driven by respondent No.1 herein in a rash and negligent manner, as a result of which Abhishek Chakravarti sustained grievous injuries on his head and other parts of the body. Looking to the gravity of the incident, he was taken to nearby hospital for treatment and while he was being taken for MRI to Samata Colony, on the way, he died. A claim petition was filed by the appellants/claimants who happen to be the legal heirs (wife and daughter) of the deceased claiming a compensation of Rs.35,00,000/- *inter alia* pleading that the deceased died due to negligent driving of the offending vehicle, at the relevant time he was aged about

36 years, working as Senior Sales Executive in Sky Automobiles Raipur and his monthly gross salary was Rs.13,000/- 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.9,54,080/- along with interest @ 6% per annum in favour of the appellants/claimants taking the net income of the deceased as Rs.7,300/- per month, applying the multiplier of 16 and deducting 1/3 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.13,000/- but the Tribunal has wrongly taken it as Rs.7,300/- per month misreading the evidence produced by the claimants regarding income of the deceased. Learned counsel for the appellant further argued that the claims Tribunal has also failed in not taking 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 monthly salary of the deceased as Rs.13,000/- vide Ex.P/5, therefore, the

1 2012 (6) SCC 421

learned Tribunal has committed gross error in holding the monthly salary of the deceased as Rs.7,300/-

6. On the other hand, it has argued on behalf of the counsel for respondent Nos. 2 and 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.9,54,080/- 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 a certificate (Ex.P/5) of employer of the deceased where he was working as Sr. Sales Executive showing his gross salary Rs.13,000/-, which was duly signed by authorised signatory. The Tribunal, on the basis of evidence of M.G. Vijayan, Manager, recorded its finding that out of 13,000/-, Rs.7,300/- was only deceased's salary and balance amount i.e. Rs.5,700/- was performance bonus. Thus, the Tribunal calculated compensation on the basis of Rs.7,300/- as the monthly salary of the deceased. The certificate (Ex.P/5) produced by the applicants/claimants shows that the deceased was drawing "gross emolument of Rs.13,000/- (including Salary and performance Bonus)". Thus, this establishes that the total monthly earning 'including Bonus' of the deceased was Rs.13,000/-. There is no need for separation of salary and bonus to decide the compensation and both can be considered as the monthly earning of the deceased as there is no substantive piece of evidence that the bonus was irregular. 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.13,000/- as pleaded and proved by the claimants is taken as it is. Annual income of the deceased thus comes to Rs.1,56,000/-.

12. Accordingly, the monthly income of the deceased is taken to be Rs.13,000/- which makes the annual income as Rs.1,56,000/-. The deceased was married and 36 years of old at the time of accident. Hence, future prospects at 50% of the actual income of the deceased is required to be taken, thus, the amount comes to Rs.78,000,/- (50% of 1,56,000/-). Further, after deducting 1/3 towards the standard deduction on the deceased himself, the annual loss of dependency comes to Rs.78,000/- [1/3rd of (1,56,000/- + 78,000/- = 2,34,000/-)] which by applying the multiplier of 16 rises to Rs.12,48,000/- as the total loss of dependency which the deceased must have spent on the dependents. The Tribunal has awarded Rs.2,500/-, Rs.2,500/-, Rs.5,000/- and Rs.10,000/- under the heads loss of estate, funeral expenses, loss of love and affection and loss of consortium respectively, which in the facts and circumstances of the present case and in view of the judgment of Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. v. Pranay Sethi[2],*** is inadequate. The Supreme Court in the matter of **Nationa Insurance (Supra)** dealt with the various heads under which compensation is to be awarded in a death case. Thus, keeping in view all these things, above discussion and in view of decisions of Hon'ble Supreme Court in the matter of ***Santosh*** and ***National Insurance (supra),*** this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires

2 (2017) 16 SCC 680

reconsideration. The claimants/appellants are entitled for compensation in the following manner:-

Head	Compensation awarded
Income	Rs.13,000/-
Future Prospect	Rs.6,500/- (i.e. 50% of the income)
Deduction towards living and personal expenses	Rs.6,500/- [i.e. 1/3 of (Rs.13,000 + Rs.6,500)]
Total income	Rs.13,000/- (Rs.19,500 - Rs.6,500)
Yearly income	Rs.1,56,000/- (Rs.13,000/- x 12)
Multiplier applied	16
Loss of future income	Rs.24,96,000/- (Rs.13,000/- x 12 x 16)
Loss of Estate, Funeral Expenses, Mental agony, Loss of love and affection and loss of consortium.	Rs.50,000/-
Total compensation awarded	**Rs.25,46,000/-**

12. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.25,46,000/- i.e. (24,96,000/- + 50,000/-) for which the claimants are entitled to receive as compensation, is just and proper, for the death of deceased Abhishek Chakravarti. Since the Tribunal has already awarded Rs.9,54,080/-, after deducting the same the claimants/appellants are entitled for enhanced amount of

Rs.15,91,920/-. 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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