NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 221 of 2013

1. Shanti Bai @ Kunwar Bai Wd/o Late Harilal, aged about 42 years.
2. Indramani D/o Late Harilal, aged about 20 years.
3. Parvati D/o Late Harilal, aged about 18 years.
4. Hemnarayan S/o Late Harilal, aged about 15 years.
5. Krishna S/o Late Harilal, aged about 6 years.

   Appellants No.4 & 5 are minor, through natural guardian mother Smt. Shanti Bai @ Kunwar Bai.

   All are R/o village Kanakpur, Silphili, Police Station Jaijainagar, Tahsil Surajpur, District Surajpur (C.G.).

---Appellants

Versus

1. The Oriental Insurance Company Limited, through Branch Manager, the Oriental Insurance Co.Ltd., Manendragarh Road, near Ambedkar Chowk, District Surguja (C.G.).
2. Ajay Parde S/o Late Premlal Parde, aged about 31 years, R/o Namnakala Sharda Sheet cover Chowk, Ambikapur, District Surguja (C.G.).
3. Dayashankar Yadav S/o Balgovind Yadav, aged about 42 years, R/o Mohmmadpur, District Gajipur (U.P.) at present Chopda Colony Vishrampur, Tahsil Surajpur, District Surajpur (C.G.).

---Respondents

MAC No. 222 of 2013

1. Vandani Bai W/o Ramsunder, aged about 55 years.
2. Ku. Laxmi Kujur S/o Late Ramsunder, aged about 24 years.
3. Jagataran Kujur S/o Late Ramsunder, aged about 20 years.
4. Pradeep Kujur S/o Late Ramsunder, aged about 18 years.

   All are by caste – Uraon, R/o Village Sambalpur, Post – Latori, Police Station – Jainagar, Tahsil Surajpur, District Surajpur (C.G.).

---Appellants

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---Respondents

For appellants/claimants	:	Shri Sushil Dubey, Advocate.
For Insurance Company	:	Shri Neelkanth Malaviya, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/02/2018

1. These are the two appeals arising out of a common order.

2. The brief facts of the case is that, the accident took place on 12/07/2010 when the two deceased persons Harilal, aged around 53 years and Ramsunder, aged around 62 years met with an accident from a Bolero Jeep bearing registration No. CG-15-B-4119. The deceased-Harilal was an employee of SECL whereas the deceased-Ramsunder was a pensioner getting pension. The legal representatives of the two deceased persons filed the claim applications before the First Additional Motor Accident Claims Tribunal, Surajpur where the cases was registered as Motor Accident Claim Case Nos.119/2011 and 118/2011. Vide the impugned award, the Tribunal in both the cases has awarded a lump sum compensation of Rs.9,00,000/- and Rs.1,50,000/- with interest @ 6% and 9% per annum respectively.

3. The counsel for the appellants/claimants submits that, the amount of compensation awarded by the Tribunal is too meagre an amount and therefore the same deserves for suitable enhancement. He further submits

that, the Tribunal was supposed to calculate the compensation in the light of the guidelines issued by the Hon'ble Supreme Court in the case of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009 {6} SCC 121]** and all subsequent decisions, but the Tribunal for the reasons best known have not ventured into such calculation and have given a lump sum compensation and thus prayed for the award to be suitably modified.

4. The counsel for the Insurance Company however opposing the appeal submits that, the amount of compensation awarded by the Tribunal seems to be just and reasonable so also there is a finding of contributory negligence by the Tribunal and therefore it does not warrant any interference. He further submits that, it is a case where the legal representatives of the deceased-Harilal have not been able to produce sufficient material to assess the income of the deceased and therefore in the absence of any sufficient evidence, the lump sum compensation awarded of Rs.9,00,000/- cannot be said to be insufficient or on the lower side, so also in the case of the deceased-Ramsunder, considering the age of the deceased which was 62 years, the compensation awarded of Rs.1,50,000/- seems to be just and reasonable and thus prayed for rejection of the appeal.

5. Having heard the contentions put forth on either side and on perusal of record what is undisputed is that, the deceased-Harilal was an employee of SECL. The appellants in the instant case i.e. the legal representatives of the deceased-Harilal have been able to produce the salary slip of the deceased for the month of April-2010 which shows that the deceased was earning a gross income of Rs.32,638/- and the net salary payable was Rs.31,248/-.

6. The fact that he was an employee of SECL is not in dispute. The salary slip also pertains to the deceased and the same cannot be brushed aside. Thus this Court assesses the monthly income of the deceased at Rs.31,248/- which is the net payment received by the deceased in April-2010.

7. So also in the case of the deceased-Ramsunder, he was a pensioner getting pension of about Rs.10,000/- per month. Though, the family pension would subsequently be paid to the widow of the deceased, but since she would be a family member, it would get reduced by 50%. Thus this Court assesses the monthly income of the deceased at Rs.5,000/- for the purpose of quantifying the compensation.

8. Even otherwise, merely because the family members would be entitled for family pension by itself cannot be a ground to deny the compensation to the claimants.

9. So far as the lump sum compensation awarded by the Tribunal is concerned, this Court has no hesitation in holding that, the said assessment made by the Tribunal is in total contravention to the guidelines issued by the Supreme Court in the case of Sarla Verma (Supra). It appears that the presiding judge of MACT was not keen in deciding the case applying the guidelines laid by the Supreme Court.

10. This court has in the recent past seen many awards passed by the same presiding judge awarding a lump sum compensation in death cases as also in injury cases. It is totally unacceptable. This Court does not approve

the manner in which the learned judge has decided the MACT cases. It is expected that such practice shall not be adopted by the said presiding judge any further or by any other presiding judge. This Court now proceeds to decide the compensation in accordance with the guidelines laid down by the Supreme Court in the case of Sarla Verma (Supra).

11. Accepting Rs.31,248/- as the monthly income of the deceased, the claimants would be entitled for 15% of the said income towards future prospects i.e. Rs.4,687/- which if added to the monthly income, the figure would come to Rs.35,935/- per month i.e. Rs.4,31,220/- yearly of which if ¼ th is deducted towards personal expenses, the amount would come to Rs.3,23,415/- which if multiplied by applying multiplier of 11, the amount would come to Rs.35,57,565/-. It is ordered accordingly that the claimants shall be entitled for a compensation of Rs.35,57,565/- towards loss of dependency. In addition, the claimants would also be entitled for a lump sum compensation of Rs.70,000/- under the conventional head which would make the total compensation payable to the claimants at Rs.36,27,565/- instead of Rs.9,00,000/- as awarded by the Tribunal.

12. So far as MAC No.222/2013 is concerned, the deceased in the instant case was a pensioner getting pension of about Rs.10,000/- per month.

13. This Court assesses the monthly income of the deceased at Rs.5,000/- per month i.e. Rs.60,000/- yearly of which if ¼ th is deducted towards personal expenses, the amount would come to Rs.45,000/- which if multiplied by applying multiplier of 7, the amount would come to

Rs.3,15,000/-. It is ordered accordingly that the claimants shall be entitled for a compensation of Rs.3,15,000/- towards loss of dependency. In addition, the claimants would also be entitled for a lump sum compensation of Rs.70,000/- under the conventional head which would make the total compensation payable to the claimants at Rs.3,85,000/- instead of Rs.1,50,000/- as awarded by the Tribunal.

14. The said enhanced amount shall also carry interest @ 6% per annum in both the appeals.

15. With the aforesaid modification, both the appeals thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit