NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 195 of 2013

1. Smt. Gyan Bai Wd./o Late Shri Dularu Ram Yadav, age 52 years

2. Ku. Gauri Yadav D/o Late Shri Dularu Ram yadav, aged 20 years.

Both R/o Ward No.18, Shashtri Nagar, Camp -1, Bhilai, Tah. & District Durg (C.G.)

---- Appellants

Versus

1. Yogesh Khare S/o Ram Charan, R/o Sanjay Nagar, Lakholi, P.S. Kotwali, Rajnandgaon, District Rajnandgaon (C.G.)

2. Kamlesh Totwani S/o S.M. Totwani, age 30 years, R/o Lal Bagh, Sindhi Colony, Rajnandgaon, District Rajnandgaon (C.G.)

3. Divisional Manager, Reliance General Insurance Co. Ltd., Plot No. 29, Nehru Nagar, (West) Commercial Complex, Bhilai, Tah. & District Durg (C.G.)

---- Respondents

For Appellants	:	Shri. Amiyakant Tiwari, Advocate.
For Respondents 1 & 2	:	Shri. Vedant Bhelonde, Advoacte.
For Respondent No.3	:	Shri. Sourabh Sharma, Advocate.

Hon'ble Smt Justice Rajani Dubey

Order On Board

13/12/2018

1. This appeal arises out of the award dated 29.11.2012

passed by 3rd Motor Accident Claims Tribunal (for short the "Tribunal"). Durg, in Claim Case No.250/2011 awarding a compensation of Rs.12,38,200/- in favour of the appellants/claimants for the death of Shri Dularu Ram Yadav (since deceased).

2. Facts of the case in brief are that on 17.02.2010 when the deceased, aged about 57 years, was coming from village to his house at Bhilai on his motorcycle bearing registration No.CG-07-LS-6041 and when he reached near Yugantar School, a Maruti Van bearing registration No.CG-07-ZD-9549 driven by respondent No.1 herein in a rash and negligent manner came from wrong side and dashed him, as a result of which he fell down, sustained grievous injuries in his head and died on the spot. A claim petition was filed by the appellants/claimants who happen to be the legal heirs of the deceased claiming a compensation of Rs.37,99,040/- *inter alia* pleading that the deceased died due to negligent driving of the offending vehicle, at the relevant time he was aged about 57 years, working on the post of CMAN in Bhilai Steel Plant, Durg and his monthly gross salary was Rs.34365/- 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.12,38,200/- along with interest @ 7.5% per annum in favour of the

appellants/claimants taking the income of the deceased as Rs.33,700/- per month, applying the multiplier of 9, deducting 1/3 towards his personal expenses and further deducting share of his three married daughters. Hence this appeal for enhancement.

5. Counsel for the appellants/claimants submits as under:-

- That the finding recorded by the Tribunal is not in accordance with law and the amount awarded is on the lower side.
- That the Tribunal has erred in law in deducting the amount towards personal expenses on the ground that in all six persons including three married daughters were also dependent on the deceased.
- That the Tribunal has also erred in law in deducing three shares of the married daughters of the deceased whereas, the married daughters were not party before the Tribunal.
- That the claims Tribunal has also failed in not taking future prospect as per the ration laid down in the case of ***Santos Devi V. National Insurance Co. Ltd***[1].
- That monthly income of the deceased has erroneously been calculated by the Tribunal. Likewise, under conventional heads also appropriate amount has not been awarded.

1 2012 (6) SCC 421

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.12,38,200/- 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. There is evidence on record that the gross salary of the deceased was Rs.34,365/-. It is settled position of law that 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.34,365/- as pleaded and proved by the claimants is taken as it is. Annual income of the deceased thus comes to Rs.4,12,380/-.

11. Accordingly, the monthly income of the deceased is taken to be Rs.34,365/- which makes the annual income as Rs.4,12,380/- and after deducting Rs.7,920/- towards income tax, it comes to Rs.4,04,460/-. The deceased was married and 57 years of old at the time of accident. Hence, future prospects at 15% of the actual income of the deceased is required to be taken, thus, the amount comes to Rs.60,669/- (15% of 4,04,460/-). Further, there being two claimants, the deduction of 1/3 towards personal expenses of the deceased from his annual income would be just and proper. Accordingly, by deducting 1/3rd from the annual income of the deceased, the claimant's dependency is assessed at Rs.3,10,086/- (Rs.4,65,129 - Rs.1,55,043).

12. The Tribunal has assessed total income of the deceased at Rs.36,39,600/- and recorded the finding that prior to death of the deceased there were in all six dependents and at the time of incident the number of dependents reduced to two persons only. The Tribunal has also recorded the finding that the deceased might have been spending Rs.24,26,400/- (2/3rd of Rs.36,39,600) upon the dependents before expending 1/3rd i.e. 12,13,200/- (1/3rd of Rs.36,39,600) on himself towards personal expenses and divided this amount (Rs.24,26,400) in

six shares of Rs.4,04,400/- each and assessed the compensation at Rs.12,13,200/- giving two shares to appellant No.1 and one share to appellant No.2 and considered the balance amount i.e. Rs.12,13,200/- to be private estate of the deceased. The learned Tribunal has committed gross error in deducting three shares totaling to Rs.12,13,200/- of married daughters of the deceased for the reason that three married daughters were not party before the Tribunal and they were not dependent on the deceased.

13. Looking to the age of the deceased and two claimants/appellants, at the time of accident, this Court is of the opinion that the Tribunal has rightly applied the multiplier of 9 in this case. This Court has already assessed the claimants' dependency at Rs.3,10,086/- after deducting 1/3rd towards person expenses. Therefore, the compensation is assessed to Rs.3,10,086/- x 9 = Rs.27,90,774/-. That apart, the Tribunal has awarded Rs. 25,000/- under the heads funeral expenses, loss of consortium, love and affection and loss of estate, 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 & Ors***[2], is inadequate. The Supreme Court in the matter of ***National 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

2 (2017) 16 SCC 680

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

Head	**Compensation awarded**
Income	Rs.33,705/-
Future Prospect	Rs.5,055.75/- (i.e. 15% of the income)
Deduction towards living and personal expenses	Rs.12,920.25/- (i.e. 1/3rd of Rs.33,705/- + Rs.5,055.75/-)
Total Income	Rs.25,840.50/- (Rs.38,760.75 - Rs.12,920.25)
Yearly Income	Rs.3,10,086/- (Rs.25,840.50/- x 12)
Multiplier applied	9
Loss of future income	Rs.27,90,774/- (Rs.25,840.50/- x 9)
Loss of Estate	15,000/-
Loss of Consortium	40,000/-
Funeral Expenses	15,000/-

14. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.28,60,774/- i.e. (27,90,774/- + 70,000/-) rounded off at Rs.28,61,000/- for which the claimants are entitled to receive as compensation for the death of deceased Dularu Ram Yadav. Since the Tribunal has already awarded Rs.12,38,200/-, after deducting the same the claimants/appellants are entitled for enhanced amount of Rs.16,22,800/-. This additional amount of compensation shall carry interest @ 7.5% p.a. from the date of filing of claim application till realization. The amount

received by the claimants, if any, shall be adjusted in the enhanced sum.

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

Sd/-

(Rajani Dubey)
Judge

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