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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1234 of 2018

- Smt. Geeramani Durga W/o Late Nirakar Durga, Aged about 47 years, R/o 205(A) Railway Colony Sanjay Gandhi Ward No. 34, District Bastar (C.G.)

---- Appellant/Claimant

Versus

1. Dharmuram Kashyap S/o Sukman Kashyap, Aged about 26 years, Caste-Muriya, R/o Panchayat Para Keshlur, Murumguda, P.S. Parpa Jagdalpur, District Bastar, C.G. (Driver of the vehicle)
2. Jasjeet Kaur Through Harjeet Singh Suri S/o Tarvindar Singh, Aged about 45 years, Nayapara Jagdalpur, District Bastar, C.G. (Owner of the vehicle)
3. The Oriental Insurance Co. Ltd. Through The Branch Manager, Oriental Insurance Co. Ltd. Laxman Avenue Murti Line Road Jagdalpur, District Bastar, C.G. (Insurer of the offending vehicle)

---- Respondents/Non-Applicants

For Appellant	: Shri Vikash A. Shrivastava, Advocate
For Respondent No.3	: Shri Ratan Pusty, Advocate
For Respondents 1 & 2	: None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

04.10.2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimant, seeking enhancement of the compensation awarded by the Third Additional Motor Accident Claims Tribunal, Bastar vide award dated 14.03.2018 passed in Claim Case No. 01 of 2017.
2. The claimant/Appellant, unfortunate wife of deceased- Nirakar Durga aged about 45 years, claimed compensation of Rs.48,50,000/- by filing a claim petition under Section 166 (1) and Section 140 (1) of the Motor Vehicles Act, 1988 (Amended Act 1994) for death of her husband in the motor accident on 10.04.2016 at about 9:30 AM, when the deceased was going for refilling of petrol tank on his Auto at Marenga petrol pump, the driver of the offending vehicle Tipper bearing

registration No. CG 17 DA 0379 driving the said vehicle in a rash and negligent manner dashed the Auto. As a result thereof, the deceased died on the spot itself.

3. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.7,00,000/- in favour of the Appellant-Claimant, wife of the deceased, with interest @ 9% per annum from the date of application till realization.

4. Contention of the learned counsel for the Appellant/Claimant is that the income of the deceased has wrongly been assessed by the Tribunal at Rs.4,500/- whereas the deceased being an Auto driver was earning not below Rs.6,000/- per month.

5. Learned counsel for the Respondent No.3/Insurance Company however opposes the appeal and submits that the learned Tribunal has rightly assessed the income of the deceased, therefore, it is just and reasonable, which does not call for any interference in the instant claim petition.

6. I have heard the learned counsel appearing for the parties and perused the impugned order including the records of the Claims Tribunal.

7. As per evidence of the Appellant, AW-1 – Geeramani Durga, wife of the deceased, she has specifically stated that her husband was aged about 45 years and he had got an Auto financed, was driving the same and thereby earning Rs.12,000/- per month. That evidence was not challenged by the Respondents 1 and 2. As per Exhibits- A-1 and A-2 (dehatinalishi and merg intimation), it was mentioned that the deceased was running Auto.

8. Considering the evidence adduced by the Appellant/Claimant and that evidence was not rebutted by the Respondents/non-applicants, the income considered by the learned Tribunal at Rs.4,500/- per month appears to be on lower side and as the deceased, 45 years of age, was a skilled labour, his income can be taken at Rs.6,000/- per month. Based on the above income, the compensation is

calculated as under:-

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.6,000/- per month i.e. Rs.72,000/- per annum
2	25% towards future prospects added to annual income	(Rs.72,000/- + Rs.18,000/-) Rs.90,000/- per annum
3	1/3rd deduction towards personal and living expenses of Deceased	(Rs.90,000/- – Rs.30,000/-) Rs.60,000/-
4	Muliplier of 14 applied	Rs.60,000/- x 14 = Rs.8,40,000/-
5	Towards loss of consortium, loss of estate and for funeral expenses	Rs.70,000/-
	Total	Rs.9,10,000/-

Since the Tribunal has already awarded Rs.7,00,000/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.2,10,000/-.

9. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimant/Appellant shall be entitled to a total enhanced amount of compensation of Rs.2,10,000/- with further direction of payment of interest on the enhanced amount of compensation @ 9% per annum from the date of filing of the claim petition till the date of actual payment.

10. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge