NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 626 of 2016

1. Rameshwari Bai W/o Late Lakhan Lal Dewangan, Aged About 27 Years,

2. Kumari Puja D/o Late Lakhan Lal Dewangan, Aged About 10 Years,

3. Kumari Punam D/o Late Lakhan Lal Dewangan, Aged About 8 Years,

4. Kumari Radhika D/o Late Lakhan Lal Dewangan, Aged About 7 Years,

5. Basant S/o Late Bhaiya Lal Dewangan, Aged About 55 Years,

6. Nankushiya Bai W/o Late Basant Dewangan, Aged About 52 Years

Appellant Nos. 2 to 4 are minor through his legal Guardian Rameshwari Bai.

All are R/o Village- Shankar Nager Ward No.-4, Padariya Road Takhatpur Tahsil Takhatpur Distt. Bilaspur, Chhattisgarh.

---- Appellants/Claimants

Versus

1. Raj Kumar S/o Koushal Prasad Soni, Aged About 39 Years Occupation- Driver Of Offending Vehicle Truck No. C.G.04/ J.A./8471 R/o Village- Tulsi, Thana- Newara, District- Balaoda Bazar, Chhattisgarh.

2. Yogesh Kumar S/o Laxmi Narayan Gandhi, Aged About 50 Years Occupation- Owner Of Offending Vehicle Truck No. C.G.04/ J.A./8471, R/o Village- Tilda Newara District- Balaoda Bazar, Chhattisgarh.

3. The Oriental Insurance Company Limited, Branch Office Bhathapara Distt.- Raipur, Chhattisgarh, Insurer Of Offending Vehicle Truck No. C.G.04/ J.A./8471.

---- Respondents

For Appellant	Shri A.L. Singroul, Advocate.
For Respondent No.2	Shri Ashish Surana, Advocate.
For Respondent No.3	Ms Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

12/11/2018

1. By the instant appeal, the appellants/claimants are challenging the legality and validity of the award dated 31.01.2014 passed by the Additional Motor Accident Claims Tribunal, Mungeli, District – Bilaspur, C.G (in short “Claims Tribunal') in Claim Case No.48/2012, whereby the learned Claims Tribunal awarded total compensation of Rs. 4,18,000/- along with interest @ 6 percent per annum from the date of application till its actual payment and fastened the liability on respondent No. 3 – Insurance Company for satisfying the award of compensation.
2. Brief facts of the case, are that on 23.10.2009 deceased -Lakhan Lal Dewangan, aged about 30 years, who was working as a Retailer and Wholesale Scrap Dealer, met with an accident at about 9:20 PM. The deceased Lakhan Lal Dewangan was a pillion rider of motor cycle. At the time of accident the respondent No.1 while driving the offending vehicle truck bearing registration No. CG04-JA-8421 rashly and negligently, dashed the vehicle of deceased. The deceased received severe injuries and died on the spot. The claimants, who are parents, wife and minor children of deceased -Lakhan Lal Dewangan**,** have filed claim application before the Tribunal claiming compensation to the tune of Rs. 32,00,000/- from the respondents under various heads.
3. Respondent No.3 – Insurance Company has contested the case by filing its written statement and pleaded that the claim of the claimants is on higher side and also pleaded that vehicle was being driven in breach of terms and condition of insurance policy,

as the driver was not holding valid and effective driving licence to drive the offending vehicle.

4. Learned Claims Tribunal after considering the pleadings, evidence and other material available on record, awarded Rs. 4,18,000/- as total compensation to the claimants as mentioned above.

5. Learned counsel appearing for the claimants submits that at the time of accident, income of the deceased was Rs.12,000/- per month but the Tribunal has wrongly taken at as Rs.3000/-. He further submits that the learned Claims Tribunal erred in not awarding any amount towards the loss of future prospects on the ground that the deceased on the date of accident was a Private Employee and was working as a Wholesale Scrap Dealer.

6. Per contra learned counsel appearing for the Insurance Company supported the award and submitted that the learned Claims Tribunal has passed the impugned award after considering all the facts and circumstances of this case and award passed by the Tribunal is just and proper.

7. I have heard the learned counsel for both the parties and perused the records.

8. So far as the income of the deceased is concerned, the claimants have pleaded that the deceased was working as a Wholesale Scrap Dealer and thereby earning Rs.12,000/- per month. But no evidence has been adduced by the claimants to substantiate the said plea. In such circumstances, considering the nature of job of the deceased and the minimum wages at the relevant time, his

monthly income can safely be taken as Rs.4,500/- i.e. 54,000/- per annum. As per evidence of CW-1 Rameshwari Bai and the postmortem report, the deceased was 30 years of age and therefore, the Tribunal was justified in applying the multiplier of 17. However, the Tribunal has fallen into error in deducting 1/3 towards personal and living expenses of the deceased whereas in view of judgment of Hon'ble Supreme Court in ***Smt. Sarla Verma and others*** v. ***Delhi Transport Corporation and another,*** **(2009) 6 SCC 121,** as there are 6 dependents, the deduction should have been ¼. Further, the Tribunal has not awarded any amount towards future prospect whereas considering the age of the deceased and his nature of job 40% of his annual income ought to have been added thereto towards future prospect in the light of the Hon'ble Supreme Court in **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680.** Thus, in view of the aforesaid decisions, the claimants are held entitled for compensation in the following manner:-

Head	Calculation
Income of the deceased	Rs.4,500/-x12= Rs.54,000/- per annum.
40% towards future prospect	Rs.21,600/- Rs.54,000/- + 21,600 = 75,600/-
¼ deduction towards personal and living expenses of the deceased	Rs.18,900/-
Annual loss of dependency	Rs.75,600/- – Rs.18,900/- = Rs.56,700/-
Multiplier of 17 applied for assessing total loss of dependency	Rs.56,700 x 17 = 9,63,900/-

Towards Conventional Heads	Rs.70,000/-
Total	Rs. 10,33,900/-

9. For the reasons mentioned herein above, the appeal is allowed in part. The compensation of Rs.4,18,000/- as awarded by the Tribunal is enhanced to Rs.10,33,900/-. The appellants are further entitled to receive enhanced amount of compensation of Rs.6,15,900/-, over and above the amount awarded by the Tribunal. The enhanced amount of compensation shall carry interest @ 6% per annum from the date of claim application till its actual payment. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

10. The respondent No.3/Oriental Insurance Company Limited is granted one month time to deposit the enhanced amount of compensation with interest before the concerned Claims Tribunal.

11. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh