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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 455 of 2015

1. Smt. Anju Kujur Wd/o Late Alok Toppo, aged about 24 years, Occupation - None
2. Minor Ku. Ankita Toppo D/o Late Alok Toppo, aged about 01years

   For Appellant No. 2 through her mother next friend Smt. Anju Kujur Wd/o Late Alok Toppo, Appellant No.1

   All R/o – Village- Parhi Dandi Toli, Post- Buti, Police Station – Senha, District- Lohardaga, Civil and Revenue District – Lohardaga (Jharkhand)

---- Appellants/Claimants

Versus

1. Vinay Kumar Tirky S/o Late Vicktor Tirky, aged about 30 years, Proprietor Ms Tirky Politry Farm, Karbala Road, Jashpur, District – Jashpur (C.G.) **(Owner)**
2. The Oriental Insurance Company Limited, Local Branch Office Raigarh, District – Raigarh (C.G.) **(Insurer)**

---- Respondents

For Appellants	:	Shri Sukhnath Painkra, Advocate appears on behalf of Shri A.K. Prasad, Advocate
For Respondent No.2	:	Smt. Chitra Shrivastava, Advocate
For Respondent No.1	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

24.10.2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Jashpur (C.G.) vide award dated 10.03.2015 passed in M.A.C.T. No. 06 of 2014.

2. The claimants/Appellants, unfortunate wife and daughter of deceased- Alok Toppo aged 25 years, claimed compensation of Rs.30,85,000/- by filing a claim petition under Sections 140 and 166 of the Motor Vehicles Act, 1988 for the death of deceased in the motor accident.

3. The facts of the case are that on 28.06.2013, the deceased, who was

Supervisor in the Tirky Poultry Farm, and driver were going in the vehicle-Bolero of Poultry Farm to Village Ratiya, when they reached Village Kulda near Sandeep Grocery Shop, the driver of the offending vehicle i.e. Bolero bearing registration No. CG/14/MB/0342 driving the said vehicle in a rash and negligent manner dashed the vehicle with a tree. The deceased sustained grevious injuries and during treatment in Hospital, he died on 13.08.2013.

4. The learned Tribunal, in the impugned award, has considered the income of the deceased as Rs4,500/- per month and has awarded a compensation of Rs.9,89,400/- in favour of the Appellants-Claimaints with interest @ 9% per annum from the date of application till realization. The Tribunal has also directed that the Respondents are jointly and severally liable for payment of compensation to the Claimants.

5. Contention of the learned counsel for the Appellants/Claimants is that the income of the deceased has been considered by the Tribunal at Rs.150/- per day and Rs.4,500/- per month, but the Tribunal has taken the annual income of the deceased at Rs.42,450/- for 283 days. He contended that the deceased was a Supervisor in a poultry-farm and therefore his monthly income ought to have been considered as per minimum wages prevalent at that time i.e. Rs.5,000/-. He submits that the Tribunal has not awarded any amount towards future prospect, this may also be considered in this appeal.

6. Learned counsel for the Respondent No.2/Insurance Company however opposes the appeal and submits that the Tribunal has rightly assessed the income of deceased at Rs.4,500/- per month, therefore, it is just and reasonable, which does not call for any interference in the instant claim petition.

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

8. Considering the age of the deceased i.e. 25 years and evidence adduced by Appellants/Claimants to the effect that the deceased was a Supervisor in a poultry-farm, the minimum wages of the skilled/unskilled labour is Rs.5,000/- per month at the relevant time, the income considered by the learned Tribunal at Rs.4,500/- per month and the annual income at Rs.42,450/- appears to be on lower side and it can safely be taken at Rs.5,000/- per month. The Tribunal has not granted any amount towards future prospect. However, considering the facts and circumstances of the case, the claimants are entitled to addition of 40% in the annual income towards future prospects, in view of the decision of the Apex Court in ***National Insurance Company Limited*** vs. ***Pranay Setthi, (2017) 16 SCC 680***. Thus, the claimants are entitled for compensation in the following manner :

Sl.No.	**Head**	**Calculation**
1	Income of the deceased	Rs.5,000/- per month i.e. Rs.60,000/- per annum
2	40% towards future prospects added to annual income	(Rs.60,000/- + Rs.24,000/-) Rs.84,000/- per annum
3	1/3rd deduction towards personal expenses of Deceased	(Rs.84,000/- – Rs.28,000/-) Rs.56,000/-
4	Multiplier of 18 applied	Rs.56,000/- x 18 = Rs.10,08,000/-
5	Medical expenses	Rs.3,80,000/-
6	Loss of consortium, love & affection, mental agony, funeral and conveyance	Rs.1,00,000/-
	Total	**Rs.14,88,000/-**

Since the Tribunal has already awarded Rs.9,89,400/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.4,98,600/-.

9. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimants/Appellants shall be entitled to a total enhanced amount of compensation of Rs.4,98,600/- 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. However, rest of the conditions of the impugned award shall remain intact.

10. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

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