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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1180 of 2014

1. Subhash Rai, aged about 40 years, S/o Late Hirday Rai
2. Ku. Renuka, aged about 12 years, D/o Subhash Rai
3. Ku. Prabhati Rai, aged about 11 years,
Appellant No. 02 to 03 being minor through father Subhash Rai,
All by Caste Namosudhra, R/o Village Anjali Nagar, Nayabazar Para,
Pakhanjore, Thana and Tahsil Pakhanjore, District Uttar Bastar Kanker

---- Appellants/Claimants

Versus

1. Sushil Verma aged about 25 years, S/o Biharilal Verma, R/o Village Behind
B.R. Cold Storage, Near Khaprapara / Bhatti, Parpa, Jagdalpur
(Driver)
2. Mahboob Khan, aged about 60 years, S/o Hukumdar Khan, R/o
Rautpara, Ward No.19, Itwari Ward Thana Tahsil and Distt. Jagdalpur
(Owner)
3. Branch Manager, Bharti X General Insurance Co. Ltd. IInd Floor, Khicriya
Complex, Nehru Parisar Bhilai Nagar, District Durg
(Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri Salvik Tiwari, Advocate
For Respondents No. 1 & 2	:	None
For Respondent No. 3	:	Shri D.L. Dewangan, Advocate appears on behalf of Shri Abhishek Sinha, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

16.04.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of compensation awarded by the Additional Motor Accident Claims Tribunal, Bhanupratappur, District North Bastar Kanker (C.G.) vide award dated 23.08.2014 in Claim Case No. 99 of 2012.
2. The Appellants/Claimants, unfortunate husband and minor children of

deceased- Kajal Rai, claimed compensation of Rs.20,75,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of Kajal Rai in the vehicular accident.

3. Brief facts of the case are that on 25.02.2012 when Claimant No.1- Subhash Rai and his wife deceased- Kajal Rai were coming from Dhamtari to Pakhanjore by their motorcycle Passion Pro bearing registration No. CG-19/BA/2220, the offending vehicle Truck bearing registration No. CG-17/H/1834 which was being driven by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3, in a rash and negligent manner, dashed the motorcycle near Korr Chowk Main Road Charama. As a result thereof, Subhash Rai and Kajal Rai fell down on the road and head of Kajal Rai came into front and rear wheel of the Truck due to which Kajal Rai died on spot.

4. The learned Tribunal, in the impugned award, has awarded a total compensation of Rs.3,66,000/- in favour of the Appellants/Claimants with interest @ 6% per annum from the date of application till realization and fastening liability on the non-applicants jointly and severally to pay compensation to the Claimants.

5. Learned counsel for the Appellants/Claimants submits that at the time of accident, deceased- Kajal Rai was aged about 32 years and was earning Rs.10,000/- per month by doing the work of ladies tailor, but, the income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas it should have been Rs.5,000/- per month treating her as a skilled labour. He further submits that multiplier of 14 has wrongly been applied by the Tribunal whereas considering the age of the deceased i.e. 32 years, it should have been 16. He also submits that no amount towards future prospects has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

6. On the other hand, learned counsel for the Insurance Company/non-applicant No.3 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation

which needs no interference by this Court.

7. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents/non-applicants.
8. Heard learned counsel for the parties and perused the material available on record.
9. As regards income of the deceased, the Claimants have pleaded that the deceased was earning Rs.10,000/- per month by doing the work of ladies tailor but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4,500/- per month as per minimum wages for skilled labour at the relevant time. Further, considering the age of the deceased i.e. 32 years, the dependency, the nature of her job and the decisions of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** and **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, the Appellants/Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (in rupees)
01	Income of the deceased @ Rs.4,500/- per month	Rs.54,000/- per annum
02	40% of (1) above to be added towards future prospects	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/-
03	1/3rd deduction towards personal and living expenses of the deceased	(Rs.75,600/- – Rs.25,200/-) Rs.50,400/-
04	Multiplier of 16 to be applied	Rs.50,400/- x 16 = Rs.8,06,400/-
05	Conventional heads: Loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	Rs.8,76,400/-

Since the Tribunal has already awarded Rs.3,66,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for

additional compensation of Rs.5,10,400/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

vatti