NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 538 of 2013

1. Smt. Saras Upadhyay W/o Late Pradeep Upadhyay Aged About 46 Years,

2. Prateek Upadhyay S/o Late Pradeep Upadhyay Aged About 18 Years,

Both are R/o Ashok Vihar, Face -2, A.V. 16, Thana Sarkanda, Revenue/Civil Distt. Bilaspur (C.G.)

---- Appellants/Claimants

Versus

1. Raj Kumar Singh S/o Sanohar Singh Aged About 21 Years R/o Village And Post- Beltara, Thana- Ratanpur, Revenue/Civil Distt. Bilaspur (C.G.) (**Driver**)

2. Arun Kumar Jaiswal S/o Balram Kumar Jaiswal Aged About 45 Years R/o Village/post- Beltara, Thana- Ratanpur, Revenue/civil Distt. Bilaspur (C.G.) (**Owner**)

3. Branch Manager, The Oriental Insurance Co. Ltd., Branch Office - Rama Trade Center, 1st Floor, In Front Of Rajeev Plaza, Bus Stand Road, Revenue/Civil Distt. Bilaspur (C.G.) **(Insurer)**

---- Respondents

For Appellants	:	Shri Samir Singh, Advocate.
Respondent No. 3	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

12/04/2019

1. This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 18/03/2013 passed by First Motor Accident Claims Tribunal, Bilaspur, District Bilaspur (C.G.) in Claim Case No. 118/2010 awarding total compensation of Rs. 7,64,928/- with interest @

6% per annum from the date of application till realization, considering 20% negligence on part of deceased himself and 80% negligence on the non-applicant No. 1 and liability fastening upon non-applicant No. 1, 2 & 3 jointly and severally.

2. As per claim petition, on 19/05/2009 around 04:25 PM deceased Pradeep Upadhyay, aged about 52 years, earning Rs. 79171 per month working as Senior Technician (Velder) in SECL Dipka Korba, was riding his motorcycle bearing No. CG12 3022 and going towards Korba from Bilaspur with moderate speed. However, on the way near Koni, non-applicant No. 1/Rajkumar Singh, driver of the offending vehicle Metador bearing No. CG10 A 0683, rashly and negligently dashed the motorcycle of the claimant. As a result of this accident Pradeep Upadhyay sustained grievous injury and died. At the time of accident offending vehicle was owned by non-applicant No. 2/Arun Kumar Jaiswal and insured with non-applicant No. 3/The Oriental Insurance Co. Ltd.

3. On claim petition filed by claimants' wife and son of deceased under section 166 of Motor Vehicles Act, 1988 the Tribunal considered the evidence led by the parties and passed an award as mentioned above in para 1 of this judgment.

4. Learned counsel for the appellants submits that though he has raised various grounds in this memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds only :-

i. that the income of the deceased has wrongly been considered by learned tribunal Rs. 1,28,339/- per annum and wrongly deducted the income looking to the compassionate appointment of his son, actually income of deceased is Rs. 20,632/- per month.

ii. that the learned Tribunal has been wrongly deducted 10% Income Tax.

iii. that the no amount towards future prospect has been granted to the claimants.

iv. that the 1/3rd deduction towards personal and living is also against the law and it should have been 1/4th.

v. that the multiplier of 11 has wrongly been applied and considering the age of the deceased, it should have been 13.

vi. that the learned Tribunal has been wrongly considered 20% contributory negligence on part of deceased whereas no any evidence adduced by the respondent regarding contributory negligence on part of deceased.

vii. that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***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***.

5. On the other hand, learned counsel for the respondent/insurance company 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.

6. No counter appeal has been filed by the respondents as submitted by counsel for the parties.

7. Heard learned counsel for the parties and perused the material available on record.

8. That looking to the incident of the case that two vehicles are dashed in which one vehicle Metador driven by respondent No. 1 and motorcycle driven by deceased Pradeep Upadhyay by way of head on collision. The learned Tribunal has assessed the contributory negligence accepting the plea of Insurance Company that only two vehicles are dashed head on collision. As per Ex. A-3 Merg Intimation, Ex. A-3 FIR, Ex. A-4 Spot Map proved by the claimant and as per Ex. A-9 charge Sheet under section 304(A) of I.P.C. filed against non-applicant No. Raj Kumar Singh. In this case no counter FIR is lodged against deceased and no any evidence adduced by respondent and driver of offending vehicle regarding any negligence on part of the deceased, therefore, without any cogent and clinching evidence learned Tribunal wrongly considered 20% contributory negligence in part of deceased. Even driver of the offending vehicle Raj Kumar Singh was not examined himself before

Tribunal and no other evidence adduced by the respondent regarding negligence part of the deceased. Looking to the entire evidence adduced before the Tribunal the finding of 20% contributory negligence on part of considered by learned Tribunal is set aside.

9. The income of deceased was only come under the purview of the tax which is in range of Rs. 30,000/- to Rs. 40,000/- but income upto Rs. 1,60,000/- is exempted under Income Tax slab and above Rs. 1,60,000/- Standard deduction and other deposited GPF and GIS and hence the income of the deceased is not taxable. Therefore, deduction of Income Tax considered by Tribunal is also not permissible looking to income of deceased being not taxable.

10. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs. 20632.84 per month as per Certificate Ex. A-1, documentary evidence in support thereof has been adduced. No, any deduction on part of income Tax and compassionate appointment of son applicant No. 2/Prateek Upadhyay is permitted under the settled principle and law. Further, considering the age of the deceased i.e 55 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma and Pranay Sethi* (supra), the claimants are held entitled for compensation in the following manner:-

Sl. No.	Heads	Calculation (in Rupees)
01.	Income of the deceased @ Rs. 20632 per month (as assessed by Tribunal)	Rs. 2,47,584/- per annum
02.	15 % of (i) above to be added towards future prospects.	(Rs 247584 + 37138) = Rs. 284722/-
03.	1/3 deduction towards personal and living expenses of the deceased	(Rs. 284722 - 94907) = Rs. 1,89,815/-
04.	Multiplier of 11 to be applied	(Rs. 189815 x11) = Rs 20,87,965/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
	Total compensation	**Rs. 21,57,965 /-**

11. Since the Tribunal has already awarded Rs. 7,64,928/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 13,93,037/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant