NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 919 of 2015

1. Deeparati Vishwakarma, Wd/o Late Devendra Vishwakarma, Aged About 39 Years, R/o M.D. 636 Deepka Colony, Gewara Project Tahsil Katghora District Korba Chhattisgarh Hall Mukam Goandpara Bilaspur Tahsil And District Bilaspur Chhattisgarh.

2. Kumari Himani Vishwakarma, D/o Late Devendra Vishwakarma, Aged About 11 Years Minor Through Mother Deeparati Vishwakarma R/o M.D. 636 Deepka Colony, Gewara Project Tahsil Katghora District Korba Chhattisgarh Hall Mukam Goandpara Bilaspur Tahsil And District Bilaspur Chhattisgarh,

---- Appellants/Claimants

Versus

1. Mithun Kumar Verma S/o Radhe Shyam Verma Aged About 25 Years R/o Village Sendri, Tahsil And District Bilaspur Chhattisgarh, (**Driver**)

2. Raj Kumar Kotwani S/o Radhamal Kotwani R/o Village Sendri, Tahsil And District Bilaspur Chhattisgarh. (**Owner**)

3. Mandal Manager The Oriental Insurance Company Limited Bilaspur Near Bus Stand Bilaspur Chhattisgarh. (**Insurer**)

---- Respondents

For Appellants	:	Shri Sanjay Agrawal and Shri Shivansh Pandey, Advocates.
For Respondent No.3	:	Shri N.K.Malviya, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

Award/Order on Board

08.11.2019

1. This Miscellaneous Appeal has been preferred by Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the award dated 28.04.2015 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur (henceforth, the Claims Tribunal) in Claim Case No.174/2014, by which, the Claims Tribunal, while allowing the claim in part, has awarded total amount of

compensation to the tune of Rs.10,56,992/- with interest @ 6% per annum from the date of filing of Claim Petition till its realisation. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 13.02.2013, deceased Devendra Vishwakarma was going from Sipat Chowk to Ratanpur by his Motorcycle and on the fateful day, he was hit vehemently by the offending vehicle 'Truck' bearing Registration No. C.G-10-C/4306 from its opposite side, which was owned by Non-Applicant No.2 – Raj Kumar Kotwani and insured with Non-Applicant No.3 – the Oriental Insurance Company Limited. At the time of occurrence, the offending vehicle was being driven in a rash and negligent manner by its driver, namely, Mithun Kumar Verma, Non-Applicant No.1. As a result of which, the deceased sustained serious multiple injuries and expired on the spot.

3. On account of the aforesaid accident, a Claim enumerated under Section 166 of the Act of 1988 has been made by the Claimants, who are the widow and minor daughter of deceased Devendra Vishwakarma, alleging, inter alia, that the deceased was working as an Operator of Heavy Earth Moving Machine (HEMM) in Gevara Project of S.E.C.L. and used to earn Rs.62,595/- and thus claimed total amount of compensation to the tune of Rs.1,02,22,000/- under various heads.

4. Non-Applicants No. 1 & 2, the Driver and Owner of the offending vehicle, were proceeded ex parte, while Non-Applicant No.3 – the Insurance Company contested the Claim, by disputing monthly income of the deceased, mainly on the ground that the driver of the offending vehicle was not holding effective and valid driving license, and therefore, no liability could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the accident occurred on 13.02.2013 due to rash and

negligent driving of the driver of the said vehicle, resulting into sad demise of Devendra Vishwakarma. It held further that the vehicle in question was not being used in violation of the insurance policy and that by observing that the deceased's wife was provided a compassionate appointment and that by considering further the monthly income of the deceased to the tune of Rs.11,784/-, yearly Rs.1,41,408/-, awarded total amount of compensation along with the interest, as mentioned herein above.

6. Being aggrieved, the Claimants have preferred this Appeal. Shri Sanjay Agrawal, learned counsel appearing for the appellants submits that while calculating the amount of compensation, the Claims Tribunal has erred in assessing the monthly income of the deceased as Rs.11,784/- by taking into consideration the fact that the deceased's wife was provided a compassionate appointment. However, the said fact was not required to be taken into account in awarding just and fair compensation under the Act of 1988. It is contended further that a bare perusal of the documentary evidence like Ex.P.11, it is evident that after deducting the amount towards income tax, net salary of the deceased was Rs.6,31,024/-. While ignoring the alleged unrebutted material documentary evidence, the Claims Tribunal has fallen in error in not awarding just and fair compensation to the Claimants. The award impugned is, therefore, liable to be enhanced, in view of the said particulars of the yearly pay certificate (Ex.P.11). It is contended further by him that while awarding the amount of compensation, the Claims Tribunal has erred in not considering the future prospects of the income of the deceased and, erred further in not providing proper amount of compensation under the conventional heads.

7. On the other hand, Shri N.K.Malviya, learned counsel for respondent No.3, while supporting the award impugned, submits that upon due consideration of the deceased's monthly pay certificate (Ex.P.10), the Claims Tribunal has awarded just and proper compensation payable to the Claimants,

and therefore, it does not require to be interfered.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. The only contention made herein is that the Claims Tribunal while awarding the amount of compensation has erred in assessing the monthly income of the deceased as Rs.11,784/-, yearly Rs.1,41,408/-. However, it ought to have been Rs.6,31,024/- after deduction of income tax, as described in Ex.P.11. From perusal of the record, it appears that in order to show the monthly income of the deceased, the Claimants have submitted the monthly pay certificate (Ex.P.9) which shows the monthly income of the deceased as Rs.62,595/- and an amount of Rs.8,400/- has been shown as deduction towards income tax and thus according to the said certificate, the monthly income, after such deduction, was Rs.54,195/-, yearly Rs.6,50,340/-. The Claimants have also produced the particulars of yearly pay certificate of the deceased, marked as Ex.P.11. According to the said certificate, it appears that the gross yearly salary of the deceased was Rs.6,91,370/- and a sum of Rs.60,346/- was shown to be the deduction of income tax. As such, the net income of the deceased, upon such deduction, was Rs.6,31,024/- (Rs.6,91,370 – Rs.60,346). It appears that without considering these unrebutted documentary evidence, the Claims Tribunal has placed its reliance only upon the monthly pay certificate (Ex.P.10). However, a bare perusal of the said document would show that the gross income of the deceased as shown therein as Rs.30,450/-, was only with regard to a few days. The Claims Tribunal has, thus, committed an illegality in calculating the amount of compensation by placing its reliance only upon it (Ex.P.10).

10. A bare perusal of the documentary evidence, as placed before the Claims Tribunal, vis-a-vis, the evidence of Shri K.A. Sundar, the Senior Manager of S.E.C.L. Gevara Project, Korba, it is evident that the gross yearly income of the

deceased was Rs.6,31,024/-, as observed herein above, after deducting the amount towards income tax, as shown in the particulars of yearly pay certificate (Ex.P.11) of deceased Devendra Vishwakarma. Since the deceased was 51 years old at the time of alleged accident, therefore, 15% of it, i.e., Rs.94,653.60 (Rs.6,31,024 x 15%), is required to be added towards future prospects of his income in view of the principles laid down in ***National Insurance Company Limited*** vs. ***Pranay Sethi*** reported in **(2017) 16 SCC 680.** Thus the actual income of the deceased would be Rs.7,25,677.60 (Rs.6,31,024 + Rs.94,653.60). As the age of the deceased was 51 years at the time of the accident, the multiplier applicable would be 11, in view of the decision rendered in the matter of ***Sarla Verma (Smt.) and others –v- Delhi Transport Corporation and another*** reported in (**2009) 6 SCC 121.** By applying multiplier of 11, total actual income of the deceased would thus come to Rs.79,82,453.60 (Rs.7,25,677.60 x 11). After deducting 1/3rd of it, i.e., Rs.26,60,817.86 towards his personal and living expenses, the total dependency would thus be worked out to Rs.53,21,635.74. In addition to this, the Claimants would be entitled to a sum of Rs.1,20,000/- under conventional heads as under:

a) Loss of consortium to wife	=	Rs.40,000/-
b) Funeral expenses	=	Rs.15,000/-
c) Loss of Estate	=	Rs.15,000/-
d) Loss of love and affection to minor daughter	=	Rs.50,000/-
		==========
Total	=	Rs.1,20,000/-
		------------------

11. Thus, the Claimants would be entitled to total sum of Rs.54,41,635.74, rounded off Rs.54,41,636/- instead of Rs.10,56,992/- as awarded by the Claims Tribunal. The awarded amount of Rs.54,41,636/- shall carry interest @ 6% per annum from the date of filing of Claim Petition till its realisation.

12. In view of the foregoing discussions, the appeal is allowed to the extent indicated herein above. Rest of the conditions made in the award impugned shall remain intact. No order as to costs.

Sd/-

(**Sanjay Agrawal**)
Judge

Anjani