NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 778 of 2014

1. Smt.Swati Gupta W/o Late Omprakash Gupta Aged About 35 Years
2. Ku. Shalki Gupta D/o Late Omprakash Gupta Aged About 17 Years
3. Koushtubh Gupta S/o Late Omprakash Gupta Aged About 16 Years
4. Ojash Gupta S/o Late Omprakash Gupta Aged About 14 Years
5. Bhrigu Prasad Gupta S/o Late Badri Prasad Gupta Aged About 71 Years
6. Smt. Malti Gupta W/o Bhrigu Prasad Gupta Aged About 55 Years

The appellant Nos. 2 to 4 being minor through their natural guardian mother Smt. Swati Gupta (appellant No.1), all belong to caste Rouniyar, R/o Village Salka, At Present R/o B Type Double Story, Bhatgaon, P.S. Bhatgaon, Tah. Bhaiyathan, Distt. Surajpur C.G.

---- Appellants

Versus

1. Subhash Chnad S/o Jawahir Lal @ Bantulal Biyar Aged About 26 Years R/o Village- Pandri, Post- Pandri, P.S. Raghunathpur, Distt. Surguja C.G.
2. Sheikh Mohammad Ali S/o Sheikh Lakhu Aged About 45 Years, Occupation Owner of vehicloe, Caste Muslim, R/o Manora, Tah. And Distt. Jashpur C.G.
3. The Oriental Insurance Company Ltd. Through the Branch Manager, Branch Bilaspur, Rama Trade Center, First Floor, Near Bus Stand, In Front Of Rajiv Plaza, Bilaspur C.G.
4. The Oriental Insurance Company Ltd. The Branch Manager, Branch Ambikapur, M.G. Road, Near Ambedkar Chowk, Ambikapur, Distt. Surguja C.G.

---- Respondents

For Appellants	Shri Abhishek Pandey, Advocate.
For Respondent Nos. 3 & 4	Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

02/01/2019

1. This is claimants' appeal seeking enhancement of compensation

awarded by the Motor Accidents Claims Tribunal, Surajpur, C.G. (for short 'the Tribunal') in claim case No.109/2011 vide award dated 20.02.2014.

2. As against compensation of Rs.1,88,18,000/- claimed by the unfortunate widow, children and parents of the deceased – Om Prakash Gupta by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (henceforth 'the Act') for his death in the motor accident on 09.08.2010, the Tribunal awarded a total sum of Rs.27,03,040/- along with interest at the rate of 8% per annum from the date of claim application till its actual payment, fastening the liability upon all respondents jointly and severally. There is no breach of policy and no counter appeal has been filed by the Insurance Company.

3. The Tribunal, on close scrutiny of the evidence led by the parties held that on 09.08.2010 accident had occurred due to rash and negligent driving of Truck bearing registration No.CG14-A-3301 by its driver – Subash Chand i.e., respondent No.1, owned by respondent No.2 and insured by respondent No.3. Deceased- Om Prakash Gupta, aged about 40 years, working as a Government Employee, died on account of injuries sustained by him in the said accident.

4. Learned counsel appearing for the appellants submits that the Tribunal has wrongly deducted 1/3 towards personal and living expenses of deceased whereas it should have been 1/4**.** He further submits that Tribunal has also not awarded any amount towards future prospect and also awarded meager amount under conventional heads. The impugned award, therefore, liable to be enhanced on the aforesaid grounds. He submits that though he has filed an application

under Order 41 Rule 27 of CPC for taking on record certificate of Annexure A-2 i.e. Form 16 under Section 203 of the Income Tax, Act, 1961 for the year, 2010-11, however, he is not pressing the same.

5. Accordingly, the application under Order 41 Rule 27 of CPC is dismissed as not pressed.

6. On the other hand, learned counsel appearing for respondent No.3 submits that the Tribunal has wrongly applied the multiplier of 15 in place of 14. He also submits that in other heads amount of compensation awarded by the Tribunal is just and proper in the facts and circumstances of the case and needs no interference.

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

8. So far as the income of the deceased is concerned, the claimants have pleaded that the deceased was working as a Government Employee and thereby earning Rs.61,871,99/- per month as per Ex.P/14 i.e. salary slip. But learned Tribunal considered the income of the deceased at Rs.22,317/- per month, after deducting the amount of Rs.39,554/-, which was included in the income of the deceased as per salary slip of Ex.P/14, being the amount of leave encashment. This assessment of monthly income of the deceased by the Tribunal is just and proper. As the deceased was 40 years of age, but the Tribunal has wrongly applied the multiplier of 15 in place of 14. The Tribunal has also 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 30% 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.22,317/-x12= Rs.2,67,804/- per annum.
30% towards future prospect	Rs.80,341/- Rs.2,67,804 + Rs.80,341/- = Rs.3,48,145/-
¼ deduction towards personal and living expenses of the deceased	Rs. 87,036/-
Annual loss of dependency	Rs.3,48,145/- – Rs.87,036/- = Rs.2,61,109/-
Multiplier of 14 applied for assessing total loss of dependency	Rs. 2,61,109 x 14 = Rs. 36,55,526/-
Towards Conventional Heads (Loss of Estate, Loss of Consortium & Loss of Funeral)	Rs.70,000/-
Total	Rs. 37,25,526/-

9. For the reasons mentioned herein above, the appeal is allowed in part. The compensation of Rs.27,03,040/- as awarded by the Tribunal is enhanced to Rs.37,25,526/-. The appellants are further entitled to receive enhanced amount of compensation of Rs.10,22,486/-, over and above the amount awarded by the Tribunal. The enhanced

amount of compensation shall carry interest @ 8% 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. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh