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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 851 of 2014

1. Smt. Phuleshwari W/o Late Lalan Ram, Caste: Rajwar, aged about 41 years
2. Pushpranjan S/o Lalan Ram, aged about 23 years
3. Lav Kumar S/o Late Lalan Ram, aged about 17 years
4. Usha Kumari D/o Late Lallan Ram, aged about 14 years

   Appellant No. 03 to 04 are minors, Presented this appeal Through Guardian Mother Smt. Phuleshwari W/o Late Lalan Ram, All are R/o Village Telaikachhar (Kenapara), Police Station: Jainagar, Tahsil Surajpur, Revenue and Civil District: Surajpur (C.G.)

---- Appellants/Claimants

Versus

1. United India Insurance Company Limited, Through: Branch Manager, United India Insurance Company Limited, Bramhroa, Ambikapur, District Surguja (C.G.)

   (Insurer of the offending vehicle)
2. Abdul Samad Ansari S/o Vajir Ali, aged about 60 years, R/o Village: Dirshi, Police Station: Surajpur, District: Surajpur (C.G.)

   (Owner of offending vehicle)
3. Shekh Mustak Ali S/o Tali Mohammad, aged about 40 years, R/o Village: Sirsi (Junapara), Police Station Surajpur, District Surajpur (C.G.)

   (Driver of the offending vehicle)

---- Respondents/Non-applicants

For Appellants	:	Ms. Uma Sahi, Advocate
For Respondent No. 1	:	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate
For Respondents No. 2 & 3	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

05.04.2019

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 Second Additional Motor Accident Claims Tribunal, Surajpur, District Surajpur (C.G.) vide award dated 26.07.2014 in Claim Case No. 313 of

2011.

2. The Appellants/Claimants, unfortunate wife and children of deceased- Lalan Ram, claimed compensation of Rs.45,10,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of Lalan Ram in the motor vehicular accident.

3. Brief facts of the case are that on 14.07.2011 when deceased- Lalan Ram was going towards Vishrampur by his bicycle, the offending vehicle motorcycle bearing registration No. CG-15/CF/7150 which was being ridden by non-applicant No.3, owned by non-applicant No.2 and insured with non-applicant No.1, in a rash and negligent manner, dashed Lalan Ram. As a result thereof, Lalan Ram received grievous injuries on his head and other parts of the body, thereafter, he was hospitalized in Mission Hospital, Ambikapur and he died on 16.07.2011 during course of his treatment.

4. The learned Tribunal, in the impugned award, has awarded a total compensation of Rs.20,39.904/- in favour of the Appellants/Claimants with interest @ 9% per annum from the date of application till realization and has fastened the liability on the Insurance Company/non-applicant No.1 to pay compensation to the Claimants.

5. Learned counsel for the Appellants/Claimants submits that it was proved before the Tribunal that at the time of accident, deceased- Lalan Ram, aged about 45 years, was a salary paid employee in S.E.C.L., Vishrampur and was earing Rs.17,295/- per month as Belt Operator but the Tribunal has wrongly deducted 30% amount toward income tax. She further submits that looking to the annual income of the deceased i.e. Rs.2,07,540/-, the deceased does not come under the category of income tax Assessee. She also submits that 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.1 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. Considering the facts and circumstances of the case, particularly considering the fact that the deceased was salary paid employee in S.E.C.L, Vishrampur, his monthly income as Rs.17,295/- and Rs.2,07,540/- per annum, the deceased does not come under the category of income tax Assessee. Thus, this Court is of the view that the income of the deceased is to be considered as Rs.17,295/- per month. Further, considering the age i.e. 45 years, the dependency, the nature of his job as he was permanent salary paid employee 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.17,295/- per month	Rs.2,07,540/- per annum
02	30% of (1) above to be added towards future prospects	(Rs.2,07,540/- + Rs.62,262/-) Rs.2,69,802/-
03	1/4th deduction towards personal and living expenses of the deceased	(Rs.2,69,802/- – Rs.67,451/-) Rs.2,02,351/-
04	Multiplier of 14 to be applied	Rs.2,02,351/- x 14 = Rs.28,32,914/-
05	Conventional heads: Loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	**Rs.29,02,914/-**

Since the Tribunal has already awarded Rs.20,39,904/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.8,63,010/- with interest @ 9% 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

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