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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 363 of 2016

1. Smt. Manki Bai widow of Late Ishwar Lal Nirmalkar, aged about 42 years
2. Prahlad S/o Late Ishwar Lal Nirmalkar, aged about 25 years
3. Kuleshwar S/o Late Ishwar Lal Nirmalkar, aged about 25 years
4. Ramesh S/o Late Ishwar Lal Nirmalkar, aged about 20 years
5. Usha S/o Late Ishwar Lal Nirmalkar, aged about 17 years

Through Smt. Manki Bai widow of Late Ishwar Lal Nirmalkar
All R/o Ganjpara, Durg, District Durg (C.G.)

---- Appellants/Claimants

Versus

1. Vikas @ Vikky Sharma S/o Ashwani Sharma, aged about 28 years, R/o Through Awatar Singh S/o Bura Singh, Azad Chowk, Raipur or Tikrapar Raipur (C.G.)
(Vehicle No. C.G.04, E. 1637- Driver)
2. Avatar Singh S/o Late Buta Singh, R/o Ajad Chowk, Raipur (C.G.)
(Vehicle No. C.G.04, E. 1637- Owner)
3. Rayal Sundaram Alliance Insurance Company Limited, Raipur (C.G.)
(Vehicle No. C.G.04, E. 1637- Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri Syed Majid Ali, Advocate
For Respondents	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

20.03.2019

1. This is Claimants' appeal filed under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Sixth Additional Motor Accident Claims Tribunal, District Durg (C.G.) in MAC No. 69 of 2012 vide award dated 22.12.2015.
2. As against compensation of Rs.23,50,000/- claimed by the Claimants, unfortunate widow and children of deceased- Ishwar Lal Nirmalkar, by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for death of Ishwar Lal Nirmalkar in the motor accident. The Tribunal awarded a total sum of Rs.12,09,372/- along with interest @ 9% per annum from the date of application till realization and fastened the liability upon non-applicant No.3 along with non-

applicants No. 1 and 2 jointly and severally.

3. Brief facts are that on 24.09.2011 while Ishwar Lal Nirmalkar was boarding the Mini-Bus bearing registration No. CG-04/E/1637, non-applicant No. 1 Vikash @ Vicky Sharma drove the vehicle without any signal rashly and negligently, as a result of which left leg of Ishwar Lal Nirmalkar got crushed under the wheel of the Mini-Bus and he sustained grievous injuries, his left leg was fractured. Ishwar Lal Nirmalkar was admitted in Government Hospital, Durg where he was operated and later on, he died.

4. Learned counsel for the Appellants/Claimants submits that deceased Ishwar Lal Nirmalkar used to earn Rs.5,000/- per month by doing the job in Cinema-Hall at Durg and the income of the deceased has been considered by the Tribunal is on the lower side. He further submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

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

6. As the evidence led by the Claimants about the income of the deceased as Rs.5,000/- per month and Rs.60,000/- per annum by doing the job in Cinema-Hall at Durg and in that behalf they produced Ex.-P/15 (Income Certificate), but it was not found reliable and the Tribunal assessed the income of the deceased at Rs.4,500/- per month, by adding 30% towards future prospect to the monthly income of the deceased at Rs.1,350/-, the actual monthly income comes to Rs.5,850/-. After deducting 1/4th i.e. Rs.1,463/- towards personal and living expenses of the deceased, the Claimants' dependency was assessed at Rs.4,387/- per month and Rs.52,644/- per annum.

7. Considering that the deceased was aged about 46-50 years on the date of accident i.e. 24.09.2011, the Tribunal selected the multiplier of 13. By multiplying the annual dependency of Rs.52,644/- with the multiplier of 13 the compensation was worked out to Rs.6,84,372/-. By awarding further sum of Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- – 1,00,000/- towards love and affection to

Claimants No. 2 to 4 each and Rs. 25,000/- towards funeral expenses, the Tribunal awarded a total sum of Rs.12,09,372/- as compensation to the Claimants for the death of Ishwar Lal Nirmalkar. The Tribunal further awarded interest @ 9% per annum from the date of application till realization.

8. The findings recorded by the Tribunal that deceased Ishwar Lal Nirmalkar died on account of injuries sustained by him in the motor accident on 24.09.2011; the accident occurred due to rash and negligent driving of the driver of the Mini-Bus; and that the Insurance Company was liable to pay compensation to the Claimants, have now attained finality as the Respondents have not filed any appeal against the award. That apart, there is overwhelming evidence on record to established the above facts. I, therefore, affirm the findings recorded by the Tribunal in that behalf.

9. True, the Claimants pleaded that deceased Ishwar Lal Nirmalkar used to earn Rs.5,000/- per month, but the evidence led in support of the said plea was not of clinching nature. In this state of evidence, I do not find any infirmity in the assessment of the income of the deceased by the Tribunal at Rs.4,500/- per month and after adding 30% toward future prospect to the monthly income at Rs.1,350/-, the actual monthly income comes to Rs.5,850/-.

10. By deducting 1/4th of Rs.1,463/- per month towards the personal expenses of the deceased by the Tribunal, the Claimants' dependency is assessed at Rs.4,387/- per month and Rs.52,644/- per annum is just and proper according to the settled principle.

11. The multiplier of 13 selected by the Tribunal considering that the deceased was aged about 46-50 years, in my opinion, is appropriate and does not call for any interference. This apart, the Tribunal has also awarded higher amount under the conventional heads.

12. I, therefore, do not find any scope for enhancement of the compensation awarded by the Tribunal either on account of assessment of the income of the deceased or Claimants' dependency or the multiplier selected.

13. In this view of the matter, the appeal filed by the Claimants under Section 173 of the Motor Vehicle Act for enhancement of the compensation is liable to be dismissed and is hereby dismissed.

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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