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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1121 of 2014

1. Jageshar, son of Tirith Ram Sahu, aged about 52 years
2. Fagni Bai, daughter of Jageshwar Sahu, aged about 42 years
3. Omprakash, son of Jageshar Sahu, aged about 23 years
4. Kumari Jyoti Sahu, daughter of Jageshar Sahu, aged about 20 years

All are resident of Village Saatpara, Post Kodapar, Police Station Abhanpur,
District Raipur, Chhattisgarh

---- Appellants/Claimants

Versus

1. Narsing Gond, son of Jagannath, aged about 50 years, resident of Sector-7,
Street No. 26, Quarter No. 26 D Bhilai Nagar, Police Station Kotwali Sector
6, Chhattisgarh
(Driver)
2. M/s Bhavesh Dubey, son of Manilal Dubey, C/o Dubey Travels New Bus
Stand Pandari, Raipur, Tehsil and District Raipur, Chhattisgarh
(Owner)
3. The Oriental Insurance Company Limited Divisional Office, Dhamtari, Sadar
Bazar Near Ghadi Chowk, Sadar Road Dhamtari, Tehsil and District
Dhamtari, Chhattisgarh
(Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri Amit Sahu, Advocate
For Respondents No. 1 & 2	:	None
For Insurance Company	:	Shri T.K. Tiwari & Tarun Dadsena, Advocates

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

20.02.2019

1. This is Claimants' appeal filed under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal (FTC), Dhamtari, District Dhamtari (C.G.) in Claim Case No. 83 of 2013 vide award dated 21.08.2014.
2. As against compensation of Rs.32,25,000/- claimed by the Claimants by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for death

of Sujeet Kumar in the motor accident, the Tribunal awarded a total sum of Rs.4,43,000/- along with interest @ 6% per annum from the date of application till realization and fastened the liability upon Respondent No.3/non-applicant No.3 along with non-applicants No. 1 & 2 jointly and severally.

3. Brief facts of the case are that the Claimants are parents, brother and sister of deceased- Sujeet Kumar. On 10.11.2012, deceased- Sujeet Kumar alongwith his friends namely Omnarayan, Gajendra Singh & Manish Kumar was going to Abhanpur from his village Saatpara by auto-rickshaw. When auto-rickshaw reached at National Highway near Gotiyardih, non-applicant No.1, driver of the offending vehicle Bus bearing registration No. CG-04/E/1282, owned by non-applicant No.2 and insured non-applicant No.3, driving the said offending vehicle in a rash and negligent manner, dashed the auto-rickshaw in which Sujeet Kumar and his friends were sitting. As a result thereof, Sujeet Kumar, Omnarayan and Gajendra Singh died on spot and Manish Kumar sustained grievous injuries on his head, legs, waist & chest.

4. Learned counsel for the Appellants/Claimants submits that at the time of accident, deceased- Sujeet Kumar, aged about 24 years, was a skilled worker and was earning Rs.12,000/- - 15,000/- per month by doing the work of white washing & painting on newly constructed houses on contract basis as also was doing the tiles fitting work. He further submits that the age of the deceased was considered in between 20 to 25 by the Tribunal but it has wrongly applied the multiplier of 17 whereas in view of the decision of the Hon'ble Supreme in the matter of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** it should have been 18. He also submits that the Tribunal has wrongly considered the income of the deceased as Rs.3,000/- per month; no amount towards future prospects has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

5. On the other hand, learned counsel for Respondent No. 3/Insurance

Company opposes the contention made by learned counsel for the Appellant. He submits that the deceased was unmarried at the time of accident and the Tribunal has wrongly deducted 1/3rd amounts towards personal and living expenses of the deceased whereas in view of the decision in *Smt. Sarla Verma* (supra) it should have been 50%.

6. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

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

8. So far as award of compensation under the conventional heads is concerned, the Tribunal has awarded amount of Rs.25,000/- for loss of estate and Rs.10,000/- for funeral expenses, therefore, it cannot be said that amount awarded under the above heads is on the lower side. As such, there is no need to enhance the said amount.

9. As regards income of the deceased, the Claimants have pleaded that the deceased was doing the work of white washing & painting on newly constructed houses on contract basis as also was doing the tiles fitting work and was earning Rs.12,000/- - 15,000/- per month, however, no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4,500/- per month as per minimum wages at the relevant time for skilled person.

10. So far as argument regarding multiplier, future prospects and deduction towards personal & living expenses of the deceased is concerned, as per postmortem report, considering the age of the deceased i.e. 24 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in the matters of *Smt. Sarla Verma* (supra) & ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the Claimants/Appellants are entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.4,500/- per month	Rs.54,000/- per annum
2.	40% of (1) above to be added towards future prospects	(Rs.54,000/- + Rs. 21,600/-) Rs.75,600/-
3.	50% deduction towards personal and living expenses of the deceased	(Rs.75,600/- – Rs.37,800/-) Rs.37,800/-
4.	Multiplier of 18 to be applied	Rs.37,800/- x 18= Rs.6,80,400/-
5.	For loss of estate	Rs.25,000/- (as awarded by the Tribunal)
6.	For funeral expenses	Rs.10,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.7,15,400/-

11. Since the Tribunal has already awarded Rs.4,43,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,72,400/- with interest @ 6% per annum from the date of application till its 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.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge