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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1158 of 2015

1. Smt. Urvashi Chandrakar, W/o Late Kamlesh Chandrakar, aged about 48 years, R/o. Village Dandesara, Tahsil Kurud, Civil & Revenue District- Dhamtari (C.G.).

---- Appellant/Claimant

Versus

1. Rajesh Kumar, S/o Chhedan Lal Yadav, aged about 38 years, R/o Kurud, Tahsil- Kurud Civil & Revenue District- Dhamtari (C.G.). (Driver of the vehicle)

2. Smt. Sunita Chandrakar, W/o Parmanand Chandrakar, R/o Bajrang Chowk, Kurmipara, Tahsil- Kurud, Civil & Revenue District-Dhamtari (C.G.) (owner of the vehicle)

3. Branch Manager, the oriental Insurance Company Limited, M.B. Trade Centre, 2nd Floor, Near Ghadi Chowk, Dhamtari, Tahsil, Civil & Revenue District- Dhamtari (C.G.). (Insurer).

---- Respondents

For Appellant	:	Shri Kunal Das, Advocate.
For Respondent No.3	:	Shri H. P. Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

07.05.2019

This appeal is by the claimant against the award dated 14.07.2015, passed by Chief Motor Accident Claims Tribunal, Dhamtari, C.G. in Claim Case No.150/2014 awarding total compensation of 4,23,000/- along with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

02. As per claim petition, on 17.04.2014, Aditiya Chandrakar (since deceased) aged about 26 years earning Rs. 40,000/- as Civil Engineer was returning home at Dandesara, on his motorcycle bearing No. CG05-B/8055 near Village- Maraud, his motorcycle slipped and he fell down at that point of

time one Maruti Car bearing No. C.G.05/F/1758 was being driven rashly and negligently by Non-applicant No. 1 and crushed the deceased, as a result thereof, the deceased sustained grievous injuries and during treatment succumbed to those injuries.

03. On claim petition being filed by the claimant/ mother of the deceased-Aditiya Chandrakar under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellant/claimant submits that as per income certificate vide Exs. P-11, P-12 and Ex. P-13 the deceased was earning Rs. 34,500/-pm as Civil Engineer but the Tribunal has erred in assessing the income of the deceased as Rs. 3,000/-pm which is on lower side. It is prayed that income of the deceased may be considered according to the income certificate (Exs. P/11, 12 & 13) as submitted by the claimant. He also submits that no future prospect has been awarded to the claimant and the amount towards conventional head is also on the lower side which should be enhanced suitably.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

05. On the other hand, learned counsel for the respondent No. 3 / insurance company submits that the claimant is the mother of the deceased and she is the only person who was dependent upon the deceased, therefore, the learned Tribunal wrongly deducted 1/3rd towards personal and living expenses and it should have been 50%. He submits that the documents Exs. P/11, 12 & 13 submitted by the claimant are not proved by any Officer of Income Tax Department or any other authorised Officer therefore, the learned Tribunal has rightly considered the income of the deceased on notional basis as Rs. 3,000/-pm and after considering all the relevant aspects of the matter has rightly awarded compensation, which does not call for any interference in the instant appeal.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121.***

06. No counter appeal is filed by the Insurance Company as submitted by learned counsel for both the parties.

07. I have heard learned counsel appearing for the parties and perused the material available on record.

08. It is undisputed fact that at the time of accident, the deceased was aged about 26 years of age. Mother of deceased in para 3 of her statement also stated that at the time of accident her son was aged about 26 years, therefore, multiplier of 17 has rightly been applied by the Tribunal. Considering the fact that the deceased was bachelor and the claimant is the mother of the deceased only the Tribunal not justified and deducting 1/3rd towards personal & living expenses and it should have been 50%. However, the learned Tribunal has wrongly considered monthly income of the deceased of Rs. 3,000/-. As per appointment letter (Ex. P/11) the deceased at the time of accident was working as Civil Engineer at Avinash Developers Pvt. Ltd and as per salary slip (Ex.P/13) it is proved that he was earning Rs. 34500/-pm. As per evidence of claimant witness No. 2 -Saurabh K. Sahu who is the Human Resources Officer posted at Avinash Developers Pvt. Ltd, he has proved the aforesaid documents regarding salary and job of the deceased. Looking to Ex. P/13 only conveyance allowance of Rs. 2,000/- and mobile allowance of Rs. 300/- can be deductible, therefore after deducting the aforesaid deduction the income comes to Rs. 32,200/-pm which can be rounded off to Rs. 32,000/-. Further, in the instant case, future prospect has not been given, therefore, looking to the age of the deceased i.e. 26 years, and nature of work, 50 % future prospect would be added to the income of the deceased. Considering the fact that the deceased was the salaried employee, as per prevalent income tax slab, 10% has to be deducted towards income tax. Further, considering the age of the deceased, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi,* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	After deduction of income tax, Income of the deceased @ Rs. 32000/- per month.	Rs. 32000x12 =Rs. 384000/-per annum
02.	50% of (1) above to be added towards	Rs.3,84,000+ 1,92,000 =

	future prospects.	Rs. 5,76,000/-
03.	After 10% deduction towards income tax	Rs. 5,18,400/-
04.	After ½ deduction towards personal and living expenses of the deceased	Rs.2,59,200/-
05.	Multiplier of 17 to be applied	Rs 2,34,738 x 17 = Rs. 44,06,400/-
06.	Towards loss of estate, loss of consortium and funeral expenses	Rs.30,000/-
07.	Towards love & affection	Rs. 5,000/- (as awarded by the Tribunal)
08	**Total compensation**	**Rs. 44,41,400/-**

Since the Tribunal has already awarded Rs.4,23,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.40,18,400/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

09. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya)
Judge

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