AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 715 of 2014

1. Smt. Rekha Bulwani W/o Late Rajesh Kumar Bulwani Aged About 26 Years
2. Master Yash Bulwani S/o Late Rajesh Kumar Bulwani Aged About 4 Years
3. Smt. Kanta Bulwani Wd/o Late Govind Ram Bulwani Aged About 55 Years
4. Smt. Leela Bulwani Wd/o Arjun Das Bulwani Aged About 70 Years

   Appellant No.2 is minor through natural guardian Smt. Rekha Bulwani (Mother) appellant No.1.

   All are residence of Kumharpara Jagdalpur, P.S. Kotwali, Jagdalpur, Distt. Bastar (CG)

---- Appellants/claimants

Versus

1. Manoj Kumar Lodhi S/o Late Mannu Singh Lodhi Aged About 28 Years R/o Behind Whether Office, Near Dilip Kirana Store, Kumharpara, Jagdalpur, Distt. Bastar C.G., (Driver)
2. Padumnath Thakur S/o K.S. Thakur through Mukesh Thakur, S/o Padumnath Thakur, R/o Near Gramin Bank Hotkachora, Jagdalpur, Distt. Bastar C.G. (Owner)
3. The Cholamandalam General Insurance Co. Ltd. through Branch Manager, Hinduja Complex, First Floor, 22 Paras Nagar Chowk, Near Rly Line, Devendra Nagar, Raipur C.G.

---- Respondents

For Appellants	:	Shri P.K. Tulsyan, Advocate.
For Respondent No.1 & 2	:	None though served.
For Respondent No.3	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment on Board

19/06/2019

This appeal is filed by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 11.4.2014 passed by First Additional Claims Tribunal, Bastar at Jagdalpur in Claim Case No.61/2014 awarding total compensation of Rs.8.52 lacs 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 19.3.2012 Rajesh Kumar Bulwani along with his grand-mother Janki Bai was travelling in Indigo Car bearing registration No. CG 17C 2471 driven by non-applicant No.1 Manoj

Kumar, owned by non-applicant No.2 Padumnath Thakur and insured with non-applicant No.3-Cholamandalam General Insurance Co. Ltd. However, due to rash and negligent driving of the said vehicle, it got dashed against a tree as a result of which Rajesh Kumar Bulwani and Janki Bai suffered grievous injuries and both of them died on the spot itself. At the time of accident, deceased Rajesh Kumar Bulwani was aged about 30 years and earning Rs.2.75 lacs per annum by running a medical shop.

03. On claim petition being filed by the claimants, wife, son, mother and grand-mother of the deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits as under:

(i) that income tax returns of the period prior to death of deceased Rajesh Bulwani i.e. Ex.A/10, A/11, A/13 to A/16 as also the Drug Licence Ex.A/17, Establishment Registration Ex.A/12 were filed and proved by the claimants but the Tribunal did not consider the same while assessing income of the deceased and only on notional basis considered income as Rs.6,000/- on the ground that nature of business is not mentioned in the income tax returns.

(ii) that looking to the income tax returns filed by the deceased himself, his annual income comes to Rs.2.55 lacs after deduction of income tax.

(iii) that no amount towards future prospect has been granted to the claimants.

(iv) that the amount awarded under the conventional heads also being on the lower side deserves to 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 ***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.

05. On the other hand, learned counsel for the respondent/insurance company 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. He submits that no expenditure details is provided in the income tax returns submitted by the deceased and the nature of business is also not explained in the same. Therefore, the Tribunal rightly discarded the income tax returns. No future prospects can be considered looking to the personal business of the claimants.

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

07. It is not disputed by both the parties that income tax returns i.e. Ex.A/10 to A/16 relate to the period prior to death of the deceased and they were submitted by the deceased himself. It is not disputed that Establishment Registration Certificate Ex.A/12 is issued for Manoj Medical Stores in favour of the deceased Rajesh and the deceased is owner of the shop. As per Ex.A/17 Drug Licence was issued in favour of the deceased for the period from 8^{th} May, 2009 to 7^{th} May, 2014. Therefore, considering all the documents i.e. income tax returns, Drug Licence, Shop Establishment Certificate and statement of AW-3 C.P. Dhanpalan Nair, Income Tax Inspector which remains uncontroverted, this Court is of the opinion that the Tribunal was not justified in assessing the income of the deceased on notional basis as Rs.6000/- per month by discarding the income tax returns on the ground that nature of business is not mentioned in the same. Hence the income of the deceased is considered as Rs.2.55 lacs per annum on the basis of income tax return for the assessment year 2011-12. This apart, considering the age of the deceased i.e. above 35 years and below 40 years and nature of his job, there has to be 40% addition to his annual income towards future prospect in view of decision of the Hon'ble Supreme Court in *Pranay Sethi* (supra). Thus, the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased	2,55,000/- per annum
02.	40% of (i) above to be added towards future prospects.	2,55,000 + 1,02,000 = 3,57,000/-
03.	1/4th deduction towards personal and living expenses of the deceased	3,57,000 – 89,250 = 2,67,750/-
04.	Multiplier of 15 to be applied	40,16,250/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses	70,000/-
	Total compensation	**40,86,250/-**

Since the Tribunal has already awarded Rs.8.52 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.32,34,250/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/

(Gautam Chourdiya)

Judge

Khan