NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 673 of 2014

1. Smt. Shakila Begam age 46 years, W/o Late Majharul Haque
2. Sumbul Saleh age 24 years S/o Late Majharul Haque
3. Ku. Shahin Haque, age 21 years, D/o Late Majharul Haque
4. Asad Saleh aged 18 years, S/o Late Majharul Haque

All resident of Baijnathpara, near Majar, Thana, Citi Kotwali Civil & Revenue Dist. Raipur C.G. Permanent Address- Jakir Nagar, Post Azad Nagar, Jamshedpur City, Civil and Revenue Dist.- Sinhbhoom (Jharkhand)

---- Appellants/Claimants

Versus

1. Radhedeep aged about 20 years, S/o Late Kumar Deep, profession- driver, R/o Jorapara, PO Azad Chouck, Thana Azad Chowk, Tahsil Raipur Civil and Revenue Dist.- Raipur C.G. (driver of vehicle No. WB-20-G-0634).
2. Subhanschand Bose, Profession vehicle owner, R/o 21/1, A, Shyamananda Road, 4th Floor, Kolkatta (WB) Pin- 700001. (Owner of vehicle No. WB-20-G-0634).

   (Name of PS not available and not mentioned in cause title)
3. National Insurance Company Limited, Divisional Office, Near BSNL Office, G.E. Road, Thana Mohdapara, Civil and Revenue Dist.- Raipur C.G. (Insurer of vehicle No. WB-20-G-0634).

---- Respondents

For Appellants	: Shri Rohitashav Singh, Advocate.
For Respondents No.1 & 2	: None
For Respondent No.3	: Shri Shivendue Pandya, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

11.04.2019

This appeal is by the claimants against the award dated 31.03.2014, passed by 4th Additional Motor Accident Claims Tribunal, Raipur C.G. in Claim Case No.13/2012 awarding total compensation of 16,94,400/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

02. As per claim petition, on 11.10.2010 deceased Majharul Haque, aged about 54 years, earning Rs.87719/- per month as Dy. Manager at Jindal Steel & Power Ltd., died in the motor vehicular accident caused due to rash and negligent driving of vehicle (Scorpio) bearing registration No. WB20G/0634 by non-applicant No.1. The vehicle is owned by Non-applicant No. 2 and insured with non-applicant No. 3.

03. On claim petition being filed by the claimants/wife & children of the deceased- Majharul Haque 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 appellants/claimants submits that at the time of accident the deceased was earning Rs. 74,235/-pm vide Ex. P/26 i.e. Rs. 8,90,820/-pa but the learned Tribunal wrongly considered the income of the deceased as Rs. 31820/-. Looking to the salary slip and after deduction of income tax it should have been considered as Rs. 7,33,000/-per year. He further submits that the Tribunal has fallen in error by considering contributory negligence to the extent of 40% on the part of the deceased because the respondent No. 3/Insurance Company has failed to produce any witness or any oral or documentary evidence in this regard. Hence, the finding of the Tribunal is bad in law.

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 matters has rightly awarded compensation which needs no interference by this Court.

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

07. So far as the contributory negligence is concerned, no evidence has been adduced by the non-applicant No. 3/Insurance Company or non-applicant Nos. 1 & 2 driver & owner of the offending vehicle to establish contributory negligence on the part of the deceased. No counter report (FIR) was lodged by the driver of the offending vehicle against the deceased. Only on the basis of spot Map (Ex. P/22) the learned Tribunal considered the negligence to the extent of 40% on the part of deceased, therefore, considering the facts & circumstances of the case and the manner in which the accident occurred and looking to the statement of Rajesh Tiwari (AW-2), this Court is of the opinion that the there was no contributory negligence on the part of the deceased and the accident occurred solely on the ground of rash & negligent driving by the driver of the offending vehicle. Therefore, the finding recorded towards contributory negligence is set aside.

08. So far as income of the deceased is concerned, at the time of accident the deceased was working as Dy. Manager at Jindal Steel & Power Ltd and as per Ex. P/26 i.e. pay slip of the deceased for October, 2010 his monthly income was Rs. 74,235/-. However, after deducting the allowances towards uniform maintenance, transport allowance, medical amount, proof pursuit Reim., LTA Reim. the income of the deceased can safely be taken of Rs. 59209/-pm i.e. Rs. 710,508/-pa. As per the decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, 15% additional income would be added into the income of the deceased which comes to Rs. 8,17,084/-.

09. Now, the income tax slab for the assessment year, 2010-2011 is as under:

Income Tax Rates/Slabs for A.Y. (2010-2011)

Men aged 65 years and less

Slab (Rs.)	**Tax (Rs.)**
Less than 1,60,000	Nil

160,000 to 3,0000/-	(TL-1,60,000)* 20%
3,00000 to 5,00000/-	14,000+(TI-3,0000)* 20%
Greater than 5,0000/-	54,000+ (TI-5,00000)* 30%

For deduction of income tax from the income of the deceased as Rs. 8,17084/-, as per income tax slab for income from 1,60,0000 to 3,00000/- 10% payable and as such it comes to Rs. 14,000/-. For 3,00000 to 5,00000/- the tax come to Rs. 40,000/-. For remaining amount the tax comes to Rs. 47,125/-. The total tax come to Rs. 149,125/-. After deducting the said tax amount from the income of the deceased i.e. 8,17084/- the amount comes to Rs. 667,959/-. However, in these circumstances, after deduction of income tax, Rs. 6,67,959/- per year can safely be taken as the income of the deceased at the relevant time. Further, considering the age of the deceased, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and Pranay Sethi, (supra)***, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased after adding 15% future prospect & after deduction income tax	Rs. 667,959/-pa
02.	After 1/3rd deduction towards personal and living expenses of the deceased	Rs.667,959 -2,22653 = Rs. 4,45,306/-
03.	Multiplier of 11 to be applied	Rs. 48,98,366/-
04.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
07.	**Total compensation**	**Rs. 49,68,366/-**

Since the Tribunal has already awarded Rs.16,94,400/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 3273,966/- 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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