NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 53 of 2015

1. Bhola Ram S/o Raghuram aged about 50 years
2. Sitaram S/o Bhola Ram, aged about 26 years
3. Pramod Ram S/o Bhola Ram, aged about 24 years.

All Caste- Gayar, R/o Village Tekul, P.S. Jashpur, Tahsil and District Jashpur, C.G. Civil and Revenue District Jashpur, C.G.

---- Appellants

Versus

1. Vinod Kumar Choudhari S/o Late Mittal Choudhari, R/o Village Kanthi, Police Sation, Darima Tahsil Ambikapur, District Surguja, C.G.

2. Rajbindra Ram S/o R.B. Ram, aged about 28 years, Occupation Driver, R/o Kalibabu Gali, Apar Bazar, Ranchi J.H.

3. Shree Ram General Insurance Company Limited, 2nd Floor JHA Niwas Opposite Hotel Yuvraj Palace, Diversion Road, Daranda, Ranchi, J.H.

---- Respondents

For Appellants	:	Shri S.S. Painkara, Advocate.
For Respondent No.3	:	Shri Deepak Gupta, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

16.01.2019

1. The appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (in short “the Act”) seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Jashpur, District Jashpur, C.G. in Claim Case No.33/2013 vide award dated 28.11.2014, thereby awarded compensation of Rs.3,14,342/- with interest @ 9% per annum from the date of application till realization in favour of the claimants, fastening liability upon Insurance Company along with non-applicants.

2. As per claim petition, on 12.04.2013 deceased Smt. Balmuni Bai, 50 years, earning Rs.130/- per day as Labour, died in the motor vehicular accident caused due to rash and negligent driving of Truck bearing no.CG15-A-0386 by respondent no.2. At the time of accident, the offending vehicle was owned by respondent No.1 and insured with respondent No.3. Hence, the claimants by filing claim application under Section 163(A) of the Motor Vehicles Act sought compensation of Rs.11,10,658/- with interest from the respondents under various heads.

3. The Tribunal considering the evidence of both the parties, by the impugned award granted compensation in favour of the claimants as mentioned in para 1 of this judgment. Hence, this appeal by the claimants for enhancement of compensation. However, no counter appeal has been filed by the respondents in this case.

4. Counsel for the appellants submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds:-

(i) that the Tribunal has wrongly excluded 90 days as non-working days while assessing the income of the deceased @ of Rs.130/- per day.

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

(iii) 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 & National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

5. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that since the claim petition was filed under Section 163A of the Act where compensation has to be awarded as per structured formula given in Second Schedule and that the Tribunal has already awarded the compensation in accordance with the Second Schedule, including the amount under the conventional heads, there is no requirement of granting any amount towards future prospect or enhancing the amount under the conventional heads.

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

7. As per award, 90 days have been excluded as non-working days in a year by learned Tribunal while assessing income of the deceased. As per statutory proviso weekly leave is also provided to the contingency paid employee, therefore, the income has to be considered for the whole year i.e. 365 days but learned Tribunal deducted 90 days, therefore, the said finding given by learned Tribunal is set aside. As regards the income of the deceased, though the claimants have pleaded that the deceased was earning Rs.3,900/- per month as a Labour, however, no documentary evidence in support thereof has been adduced. Therefore, considering the fact that the accident occurred in the year 2013, the minimum wages prevalent at that time, the annual income of the deceased can safely be taken as Rs.40,000/- per annum. Further, considering the age of the deceased i.e. 50 years, the dependency, the nature of her job and the decisions of the Hon'ble Supreme Court in *Pranay Sethi* (supra) and Second Schedule under Section 163A of the Act, the claimants are held entitled for compensation in the following manner:

S.I. No.	**Heads**	**Calculation (in rupees)**
1.	Income of the deceased.	Rs.40,000/- per annum
2.	25% of (i) above to be added towards future prospects.	Rs.10,000/- Rs.40,000 + Rs.10,000 = Rs.50,000/-
3.	1/3 deduction towards personal and living expenses of the deceased	Rs.16,666/- Rs.50,000 – Rs.16,666 = Rs.33,334/-

4.	Multiplier of 13 to be applied	Rs.4,33,342/-
5.	Towards loss of estate	Rs.2,500/-
6.	Towards funeral	Rs.2,000/-
7.	Towards loss of consortium	Rs.5,000/-
	Total Compensation	**Rs.4,42,842/-**

Since the Tribunal has already awarded Rs.3,14,342/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,28,500/- with interest @ 9% 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

Akhilesh