

HIGH COURT of CHHATTISGARH, BILASPUR
MAC No. 268 of 2017

1. Smt. Champa Bai W/o Late Mayaram, Aged About 30 Years
 2. Ashish S/o Late Mayaram, Aged About 3 Years
 3. Kumari Aanchal D/o Late Mayaram, Aged About 6 Years
Appellant No. 2&3 are minor through mother-Champa Bai.
 4. Manhair S/o Late Bisaram, Aged About 50 Years
 5. Smt. Subhaya Bai W/o Manhair, Aged About 45 Years
 6. Kumari Nirmotin D/o Manhair, Aged About 18 Years
All are Caste Gond, R/o Tarhul, Tehsil Durgukondal, Police Station
Damkasa, District North Baster Kanker, Chhattisgarh(Claimants)
- Appellants**

Versus

1. Jora Ram Vishnoie S/o Ghana Ram Vishnoie, Aged About 45 Years R/o
Through Rakesh Bothra Village Sambalpur, Police Station And Tehsil
Bhanupratappur, District North Baster Kanker, Chhattisgarh
(Driver)
 2. Pramod Kumar Jain S/o Nemichad Jain, Aged About 26 Years R/o
Sambalpur, Police Station Bhanupratappur, District North Baster Kanker,
Chhattisgarh(Owner)
 3. The Oriental Insurance Company Limited, In Front Of Aadarsh Bal Mandir,
Dhamtari, Tehsil And District Dhamtari, Chhattisgarh(Insurer)
- Respondents**

For Appellants	:	Shri Atanu Ghosh, Advocate.
For respondents No.3	:	Shri H.P. Agrawal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy
Order On Board

31/07/2017

1. For the reasons assigned in the application and finding them to be
satisfactory, IA No.1 is allowed and delay is condoned.
2. IA No.2 is also allowed. With the consent of the parties, the matter is
heard finally.
3. This is claimant's appeal under Section 173 of the Motor Vehicles Act
seeking enhancement of compensation against the award dated
09.02.2016 passed by the Additional Motor Accident Claims Tribunal,
Bhanupratappur, Distt. Kanker (in short, the Tribunal) in Claim Case

No.11/2015. Vide the impugned award, the Tribunal for the death of deceased Mayaram, aged 35 years, has awarded compensation to the tune of Rs.6,54,000/- along with interest @ 6 percent per annum from the date of application. It is this award which is under challenge in this appeal by the claimants seeking enhancement.

4. The accident, the date of accident, the resultant death of deceased Mayaram due to rash and negligent driving of driver of the offending vehicle i.e.RJ-19-GC-1022 being driven by respondent No.1, owned by respondent No.2 is not in dispute. It is also not in dispute that the offending vehicle was insured with the respondent No.3.
5. Learned counsel for the appellants submits that income of Rs.4000/- which has been taken by the Tribunal for quantification of compensation is on the lower side and the same deserves to be enhanced. The claimants had adduced evidence before the Tribunal stating that the deceased was working as a Driver and was aged about 35 years and that he was earning Rs.8000/- per month, but on account of non submission of sufficient proof, the Tribunal has accepted the wages to be only Rs.4000/- per month while quantifying the compensation which is not justified or reasonable.
6. According to the claimants, even an unskilled labourer during the said period would be earning more than Rs.150-200 a day which makes the monthly wages to be around Rs.4500-6000/- per month and therefore, Rs.4000/- as accepted by the Tribunal for quantification of compensation deserves to be enhanced. Likewise it is also contended that, the Tribunal has not taken into account the future

income under the head future prospects while quantifying the compensation. He further submits that considering the age of the deceased there would have been substantial growth in future income and therefore, he was also entitled for compensation under the head future prospects. Likewise, Rs.45,000/- awarded under the other heads is also on the lower side which deserves enhancement and prayed for modification of the award suitably.

7. Counsel appearing for the respondent-insurance company however opposes the appeal and submits that taking into consideration the evidence which have come on record particularly the fact that there was not much evidence which could be led by the claimants to prove and justify the employment and the wage, the assessment of Rs.4000/- as wages by the Tribunal cannot be faulted with, and thus, prayed for the rejection of the Appeal.
8. Having considered the rival contentions put forth on either side and on perusal of records, it has not been controverted and rebutted by any of the respondents before the Tribunal that the deceased was not working as Driver. Only on account of the fact that the claimants have not been able produce cogent evidence to establish the employment and wages, by itself, cannot be a ground for assessing the wages at something which is much less than the minimum wages which a person would have got on the relevant point of time. Driver by profession would come in an skilled category and during the time of accident even an unskilled labour earned between Rs.150-200 a day that makes it for Rs.4500-6000 per month. For the purpose of

quantification of compensation at least a figure which was in between, should have been accepted by the Tribunal and therefore, this court is of the opinion that assessment of wages at 4000/- by the Tribunal was definitely on the lower side and it ought to have been at least Rs.5000/-. Thus it is ordered accordingly that for the purpose of quantification of compensation we hold with the income of the deceased was Rs.5,000/-. The non granting of compensation under the head of future prospects also is not justified. It has to be as per Sarla Verma's case at 50% of the income.

9. If Rs.5,000/- is taken as monthly income of the deceased, the yearly income would come to Rs.60,000/- and if we add 50% under the head of future expenses, it would reach to Rs.90,000/- of which considering the total number of dependent members applying the principles as laid down by the Supreme Court in the case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. 2009(6)SCC 121, 1/5th should be deducted from 90,000/- which would come to Rs.72,000/- to which if multiplied applying the multiplier of 16, the total amount reach to 11,52,000/-. It is ordered accordingly that the claimants shall be entitled for compensation under the head of loss of dependency at Rs.11,52,000/- instead of 6,14,000/- as quantified by the Tribunal.
10. So far as compensation under the other heads are concerned, taking into consideration the view of the Supreme Court as has been laid down in the case of Rajesh & Ors. Vs. Rajbir Singh & Ors., 2013(9)SCC 54, this court is of the opinion that, claimants would have

been also entitled for lump sum compensation of Rs.1,00,000/- under the other heads inclusive of funeral expenses also.

11. Thus in the opinion of this court, the petitioner shall be entitle for total compensation of Rs.12,52,000/- instead of 6,54,000/- as awarded by the Tribunal. The enhanced amount of compensation shall also carry interest at the same rate as has been ordered by the Tribunal. Remaining part of the award shall be made with the aforesaid modification awarded.
12. Thus, the appeal stands allowed. The respondent No.3-insurance company is granted two months time to deposit the enhanced amount of compensation before the concerned claims Tribunal.

Sd/-
(P. Sam Koshy)
Judge

inder