**(2019) 06 CHH CK 0037**

**In the Chhattisgarh High Court**

**Case No :** Miscellaneous Appeal (Civil) No. 253 Of 2013

Bajaj Allianz General Insurance Company Limited — APPELLANT

Vs

Ashok Kumar Gupta And Ors — RESPONDENT

**Date of Decision :** 19-06-2019

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 166, 173

**Citation :** (2019) 06 CHH CK 0037

**Hon'ble Judges :** Gautam Chourdiya, J

**Bench :** Single Bench

**Advocate :** Abhishek Sinha, D.L. Dewangan, D. Kushwaha

**Final Decision :** Dismissed

# Judgement

Gautam Chourdiya, J

1. Being aggrieved with the award dated 03.12.2012 passed in Claim Case No. 17 of 2012 by the Third Additional Motor Accident Claims Tribunal, Ambikapur Sarguja (C.G.), the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the quantum of compensation.

2. Facts of the case, in brief, are that on 31.01.2011 deceased- Manish Gupta M.A.(C) No. 253 of 2013 alongwith Amrit Jaiswal, Rohit Vishal, Sabbir and Claimant No.1 was coming from Sitapur to Ramanujgag by vehicle-Tavera bearing registration No. CG-15/B/1595. When they reached village Nakvi near Geur River, non-applicant No. 3- Chandrama Choudhary driver of the offending vehicle Truck bearing registration No. CG- 04/JA/4330, owned by non-applicant No.2 and insured with non-applicant No.1, driving the said offending vehicle in a rash and negligent manner, dashed the Tavera. As a result thereof, Manish Gupta sustained grievous injuries and died on spot. At the time of the accident, the deceased- Manish Gutpa was aged about 22 years and was earing Rs.9,000/- per month by running a business of 'Paan-masala' as wholesale & retail shopkeeper.

 

3. A claim petition was filed by the Claimants, i.e. parents of deceased- Manish Gupta, under Section 166 of the Motor Vehicles Act, 1988 for compensation to the tune of Rs.18,86,000/-for the death of Manish Gupta in the motor accident.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.9,72,000/- in favour of the Claimants/Respondents No. 1 & 2 with interest @ 6% per annum from the date of filing of the application till realization and has fastened the liability upon the Appellant/Insurance Company to pay compensation.

5. Learned counsel for the Appellant/Insurance Company submits that without any evidence, income of the deceased has wrongly been considered by the Tribunal as Rs.7,000/- which is on the higher side. He further submits that the application under Section 166 of the Motor Vehicles Act had been filed before the Tribunal by Respondents 1 & 2/parents of the deceased- Manish Gupta, the deceased was unmarried at the time of accident and the Claimants are sole dependent on the deceased, but the Tribunal has deducted 1/3rd towards personal & living expenses which is also against the law and it should have been 50%. In support of above contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 680.

6. On the other hand, learned counsel for the Claimants/Respondents 1 and 2 M.A.(C) No. 253 of 2013 opposes the contention made by learned counsel for the Appellant/Insurance Company and submits that multiplier of 17 has wrongly been applied by the Tribunal and considering the age of the deceased i.e. 22 years, it should have been 18. He further submits that no amount towards future prospect has been granted to the Claimants/Respondents 1 & 2.

7. As per statements of Sabbir Ahmed (AW-2) and Ashok Kumar Gupta (AW-1), the deceased was earning Rs.9,000/- per month by running a business of 'Paan-masala' as wholesale & retail shopkeeper but no documentary evidence in support thereof has been adduced by the Claimants, therefore, the Tribunal was justified in considering the income of the deceased as Rs.7,000/- per month and it cannot be said to be on the higher side. Further, in view of the decision in the matter of Smt. Sarla Verma (supra), the deceased was aged about 22 years and was unmarried at the time of accident, multiplier of 18 should have been applied but the Tribunal has wrongly been applied the multiplier of 17 and deduction should be 50% towards personal & living expenses of the deceased in place of 1/3rd as deducted by the Tribunal. So far as argument advanced by counsel for Respondents 1 & 2 regarding non-grant of future prospect is concerned, though no any cross-objection and appeal has been filed by the Claimants, but when the matter is re-considered looking to the argument advanced by learned counsel for the Claimants and other aspects of the matter, the fact that the deceased was self employed person, aged about 22 years, in view of the decision of Hon'ble Supreme Court in the matter of National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680, the Claimants/Respondents 1 and 2 are entitled to 40%

 

towards future prospect. Thus, the Claimants/Respondents 1 and 2 are held entitled for compensation by re- computing in the following manner:

| Sl.No. | Head | Calculation (In Rupees) |
|---|---|---|
| 1 | Income of the deceased (as considered by the Tribunal) | Rs.7,000/- per month i.e. Rs.84,000/- per annum |
| 2 | 40% towards future prospects added to annual income | (Rs.84,000/- + Rs.33,600/-) Rs.1,17,600/- per annum |
| 3 | 50% deduction towards personal and living expenses of Deceased | (Rs.1,17,600/- - Rs.58,800/-) Rs.58,800/- |
| 4 | Multiplier of 18 applied | Rs.58,800/- x 18 = Rs.10,58,400/- |
| 5 | Filial consortium on account of death of deceased | Rs.10,000/- (as awarded by the Tribunal) |
| 6 | Loss of estate | Rs.5,000/- (as awarded by the Tribunal) |
| 7 | Funeral expenses | Rs.5,000/- (as awarded by the Tribunal) |
| | Total Compensation | Rs.10,78,400/- |

Thus, the amount of compensation awarded by the Tribunal i.e. Rs.9,72,000/- is enhanced to Rs.10,78,400/-. The additional amount of compensation i.e. Rs.1,06,400/- shall carry interest @ 6% per annum from the date of application till its actual payment. However, rest of the conditions of the impugned award shall remain intact.

8. The Appellant/Insurance Company is directed to deposit the aforesaid amount of additional compensation of Rs.1,06,400/- along with interest before the concerned Tribunal within a period of two months from the date of this judgment.

9. In the result, the appeal filed by the Insurance Company stands dismissed with modification in award impugned to the above extent. No order as to costs.

 