

IN THE HIGH COURT OF JHARKHAND AT RANCHI

M.A. No. 176 of 2011

1. Smt. Vibha Sinha W/o Late Ajay Kumar,
2. Abhigyan (minor) S/o Late Ajay Kumar,
3. Smt. Savitri Devi W/o. Sri Sheo Nandan Prasad,
4. Sheo Nandan Prasad S/o Late Raghaw Prasad,
All resident of F/1- HTIF Colony, Namkum, P.O. & P.S. – Namkum,
Dist- Ranchi. Appellants

Versus

1. The Oriental Insurance Co. Ltd. Court Compound, Circular Road, P.O. G.P.O., P.S.- Lalpur, Dist- Ranchi.
2. M/s. Prem Agencies, I/c Mr. Naveen Khandelwal, Seva sadan, P.O.- GPO, P.S. – Kotwali, Dist- Ranchi Respondents

CORAM :HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellants : Mr. Ashutosh Anand, Advocate
For the Respondents : Mr. Pratyush Kumar, Advocate

CAV ON 03. 02 . 2022

PRONOUNCED ON 10.02. 2022

1. The claimants are the appellants, who have preferred the appeal for enhancement of compensation of Rs 7,37,500/- awarded in Compensation Case No. 203/2005 under Section 166 of the Motor Vehicle Act, 1989 (hereinafter called MV Act) by the learned Presiding Officer, Motor Vehicle Accident Claims Tribunal, Ranchi for the death of Ajay Kumar in a motor vehicle accident on 12.02.2005 .
2. The accident took place while the deceased was coming to Ranchi from Bokaro by car bearing registration no. JH-01E-2043 with the consent of the owner and the said car was being driven by one Sri Harsh Khandelwal under the authority and employment of O.P. No.1. It is alleged that the vehicle was being driven rashly and negligently by its driver. Gola P.S Case No. 12 of 2005 was registered under Sections 279/337/338 of the IPC against the driver of the offending vehicle.
3. The appeal has been preferred mainly on the ground that the deceased was a qualified professional having completed B.Sc. and MBA and was employed as territorial manager in Marc sanitation Private Limited with a salary of ₹ 11,300/-. The learned Tribunal accepted monthly income of Rs. 7000/- disbelieving the evidence of the General Manager, merely on the ground that he had come to depose before the Court without taking permission for leaving the headquarters. The respondent Insurance Company has

admitted in para 15 of its written statement that the deceased was a territorial manager and therefore considering the occupation of the deceased this salary claimed ought to have been allowed. Compensation under the heading of future prospect has not been allowed and deduction of one third on personal expenses has been taken instead of one fifth.

4. Learned Counsel on behalf of the appellant submits that claimant ought to have filed the pay slip in proof of the salary of the deceased. Testimony of AW 3 on the point of salary has rightly been disbelieved as he is highly interested which is evident from the fact that without proper permission he appeared before the tribunal for evidence.

5. It is not disputed that the deceased was working as Territorial Manager in Marc Sanitation Private Limited. Claimant No.1(AW1) has stated in para 13 of the examination in chief on affidavit that the take-home salary of the deceased was ₹ 11,300/- per month. A.W. 3-S.P. Singh, the General Manager, East with Marc sanitation Private Limited has stated that Mr Ajay Kumar was appointed to the post of Sales Executive in April, 2002 initially at the salary of ₹ 7000/- for six months while he was on probation. By appointment letter dated 25.04.2002, he had been appointed in the company. It has been deposed in para 7 that the deceased was working on the monthly salary of ₹ 11,300/- plus fixed allowance of ₹ 1000/-. The appointment letter issued by the company has been proved as Exhibit 1 and the letter dated 2nd April, 2003 issued by him to the deceased has been marked as Exhibit 2. It is pointed out by the learned counsel on behalf of the respondent that Exhibit 2 is not on the letterhead of the company and also is not on the letterhead therefore, it cannot be relied upon.

6. The rules and protocols of official business in a private concern is quite different from that of a public sector undertaking or a Government Department. An adverse inference on the veracity of a witness cannot be drawn merely because he did not appear in the Tribunal after seeking a formal permission from the concerned Departmental Head. The deceased was a Territorial Manger in a private company which has not been disputed. The General Manager of the company has produced the letter of appointment issued in 2002 showing a consolidated salary of Rs.7000/- per month for the period of his probation of six months. AW 3 has come forward to depose that his current salary was Rs.11,300/- w.e.f. 02.04.2003. Against the above background facts, the claimed salary of the deceased does not appear to be

inflated or exaggerated. Taking Rs.11,300/- as the monthly income, and 38 years as the age of the deceased the final compensation amount shall work out as per the table given below:

Annual Income 11,300x12	Rs 1,35,600/-
Annual dependency after deducting 1/3 rd on the living and personal expenses of the deceased	Rs 90,400/-
Taking multiplier of 15 considering the age of the deceased to be 38 years	Rs 90,400 x 15 = Rs 13,56,000
Future Prospect @ 40%	Rs 5,42,000
Conventional head	Rs 77,000
Total	Rs 19,75,000

7. The claimants shall therefore be entitled to compensation of Rs 19,75,000 with interest @ of 7.5% per annum on the compensation amount from the date of filing of claim application from the appellant Insurance Company. The Insurance Company is accordingly directed to make payment of the compensation amount to the Tribunal within a month of this order. The Tribunal shall make the payment to the claimants after proper identification in the manner given below:

- a. 60% of the total compensation amount to be paid to claimant no.1 individually.
- b. 20% of the compensation amount to be paid to claimant no.2 jointly with claimant no.1 and shall be fixed deposited in a nationalized bank for a period till claimant no.2 attains the age of 21 years.
- c. 20% of the compensation amount to be paid to claimant nos. 3 and 4 jointly.

The appeal is allowed as at above.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 10th February, 2022

NAFR / Anit