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CGHC010392522018

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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1979 of 2018

1 - Jagatram Sahu S/o Nanhuram Sahu Aged About 40 Years R/o Putidih, Police Station- Dabhra, District- Janjgir-Champa, Chhattisgarh

2 - Smt. Shaibai Sahu W/o Jgatram Sahu Aged About 38 Years R/o Putidih, Police Station- Dabhra, District- Janjgir-Champa, Chhattisgarh

3 - Kumari Khusbu Sahu D/o Jagatram Sahu Aged About 18 Years R/o Putidih, Police Station- Dabhra, District- Janjgir-Champa, Chhattisgarh.....(Claimants)

... Appellants

versus

1 - Gajanand S/o Khedram Sonwra Aged About 20 Years Occupation- Driver, R/o Mirowni, Police Station- Chandarpur, Tahsil- Dabhra, Disrtict- (Revenue And Civil)- Janjgir-Champa, Chhattisgarh

2 - Santosh Sidar S/o Babulal Sidar Aged About 36 Years Occupation- Driver, R/o Nawapara, (D), Police Station Dabhra, District- Revenue And Civil- Janjgir-Champa, Chhattisgarh

3 - ICICI Lombard General Insurance Company Limited Through Branch Manager Icici, Branch Office- Ground Floor Vanijya Bhavan, Devendra Nagar Road, Raipur, District- Revenue And Civil Raipur, Chhattisgarh

--- Respondent(s)

For Appellants : Mr. Vivek Kumar Pandey, Advocate
 For Respondents No.1 & 2 : None
 For Respondents No.3 : Mr. Sourabh Gupta, Advocate on
 behalf of Mr. Sourabh Sharma,
 Advocate

Hon'ble Shri Justice Sanjay Kumar Jaiswal

Judgment on Board

(20.07.2026)

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short the "Act of 1988") has been preferred by the appellants/claimants seeking enhancement of the amount of compensation, challenging the impugned award dated 17.10.2018, passed in Claim Case No.49/2017, whereby the learned Claims Tribunal has awarded a total sum of Rs.5,00,000/- as compensation under Section 163(A) of the Act of 1988 for death of Chaman Sahu aged about 13 years, who died in a road accident which took place on 28.10.2016.
2. Learned counsel for the appellants would submit that the learned Claims Tribunal has erred in awarding a lesser amount of compensation in the facts and circumstances of the case. The Claims Tribunal, after considering the age of the deceased, had awarded a lump-sum amount of Rs.5,00,000/- under Section 163-A of the Act of 1988, which is not applicable in the present case. The claim petition was filed under Section 166 of the Act of 1988. Therefore, the instant appeal be allowed and the compensation awarded by the Claims Tribunal may suitably be enhanced. He further submits that although there is a breach of the insurance policy, the vehicle was insured at the time of the accident. Therefore, an order of

“pay and recover” may be passed. In support of his submissions, he has placed reliance on the judgment of the Hon’ble Supreme Court in the matter of **Hitesh Nagjibhai Patel versus Bababhai Nagjibhai Rabari & Anr. reported in 2025 LiveLaw (SC) 871.**

3. Learned counsel for respondent No.3/insurance company would submit that there is a breach of insurance policy, therefore, the insurance company is not liable to pay any amount of compensation. He further submits that the owner of the offending vehicle had also filed cross objection before this Court which was withdrawn by him. Hence, the insurance company is also not liable for pay and recover.
4. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
5. In the case at hand, true it is that the claim petition was filed under Section 166 of the Act of 1988 and the Claims Tribunal found that due to rash and negligent driving of driver Gajanand, the accident was occurred. The learned Tribunal has granted Rs.5,00,000/- under Section 163(a) of the Act of 1988. The Hon’ble Supreme Court in the matter of **Hitesh Nagjibhai Patel** (supra) a minor child who suffers death or permanent disability in a motor vehicle accident, cannot be placed in the same category as a non-earning individual for the purposes of assessing the amount of compensation because the child was not engaged in gainful employment. It is further held that in such a case, the computation of compensation under the head of loss of income ought to be made by adopting, at the very least, the minimum wages payable to a skilled workman as notified for the relevant period in the respective State where the

cause of action arises, relevant para 9 is reproduced herein-below

“9. On the aspect of monthly income of the minor appellant, we are inclined to interfere with the judgment and order of the Courts below. In the present case, it is evident that the Courts below have failed to take into account the monthly income of the appellant while determining the quantum of compensation. It is now a well-entrenched and consistently reiterated principle of law that a minor child who suffers death or permanent disability in a motor vehicle accident, cannot be placed in the same category as a non-earning individual for the purposes of assessing the amount of compensation because the child was not engaged in gainful employment at the time of the accident. In such a case, the computation of compensation under the head of loss of income ought to be made by adopting, at the very least, the minimum wages payable to a skilled workman as notified for the relevant period in the respective State where the cause of action arises. The said observation was rendered by this Court, in **Kajal v. Jagdish Chand and Ors.**(2020) 4 SCC 413, and **Baby Sakshi Greola v. Manzoor Ahmad Simon and Anr.**, 2024 SCC OnLine SC 3692.”

6. In view of above, the deceased Chaman ought to be considered as semi skilled labour and his monthly income ought to be considered as Rs.6,206/- as per the Chhattisgarh Minimum Wages Notification issued by the office of Labour Commissioner, Chhattisgarh. Furthermore, in the present case, age of the appellants No.1 & 2 at the time of filing the claim case was 40 years and 38 years. It would be appropriate to consider the age of the father to apply appropriate multiplier. Hence, applying the law laid down by Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. V. Pranay Sethi**¹, looking to the father's age of the deceased, the appropriate multiplier would be 15, to that extent the impugned award needs to be

1 (2017) 16 SCC 680

modified.

7. Thus, in light of the aforesaid discussion and in light of the judgments of the Supreme Court rendered in the matters of **Pranay Sethi** (Supra), **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Ors²** and **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors³**, this Court is computing the compensation as below:-

Sr. No.	Heads	Compensation awarded by the Tribunal	Compensation awarded by this Court
1	Income	5,00,000	Rs. 6206 x 12 = 74,472/-
2.	Future prospect		(+)40% (i.e. Rs. 29,788) = 1,04,260/-
3.	Deduction		(-) 1/2 (i.e. 52130) = 52,130/-
4.	Multiplier		(x) 15 = 07,81,950/-
5	Other conventional heads		Rs. 1,50,000/- (15000+15000+12000 0)
	Total	Rs. 5,00,000/-	Rs. 09,31,950/-

8. In view of the aforesaid analysis, the lumpsum amount of compensation of Rs.5,00,000/- awarded by the Claims Tribunal is enhanced to Rs.09,31,950/-. Hence, after deducting the amount of Rs.5,00,000/-, the appellants are held entitled for an additional amount of Rs.4,31,950/-. The additional amount of compensation shall carry interest @ 6% per annum from filing of the claim application before the Claims Tribunal till its realization. Rest of the

2 (2009) 6 SCC 121
3 (2018) 18 SCC 130

conditions of the impugned award shall remain intact.

9. The Claims Tribunal found a breach of the policy conditions inasmuch as, at the time of the accident, the driver Gajanand did not possess a valid and effective driving licence. However, the Tribunal did not pass an order for “pay and recover” as prayed for by the appellants/claimants before this Court. In view of the above, and applying the ratio of law laid down by the Hon’ble Supreme Court in the case of **Manuara Khatun and Others Vs. Rajesh Kumar Singh and Others**, reported in **(2017) 4 SCC 796**, I direct Respondent No.3/Insurance Company to first pay the amount of compensation and thereafter recover the same from the owner and/or driver by filing an execution petition before the concerned Claims Tribunal.
10. In the result, the appeal is **partly allowed** and the impugned award is modified to the extent as indicated herein-above.
11. Records of the Tribunal along with a copy of this judgment be sent forthwith for compliance and necessary action, if any.
12. The Registry is directed to communicate the claimants in writing “the enhanced amount” in this appeal as against the award made by the concerned Tribunal. The said communication be made in Hindi Deonagri language and the help of paralegal workers may be availed with a co-ordination of Secretary, Legal Aid of the concerned area wherein the claimants resides.

Sd/-
(Sanjay Kumar Jaiswal)
Judge