

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1345 of 2014

1. Smt. Sushila Rathor, W/o. Late Uma Shankar Rathor, Aged About 34 years,
2. Kumari Ayushi Rathor, D/o. Late Uma Shankar Rathor, Aged About 18 Years,
3. Piyush Rathor, S/o. Late Uma Shankar Rathor, Aged About 14 Years
4. Kumari Muskan Rathor, D/o. Late Uma Shankar Rathor, Aged About 9 Years.

All are R/o. Village- Soniyapad, P.S. Saragaon, Distt. Janjgir-Champa C.G., Present R/o. Kashi Nagar, P.S. City Kotwali, Korba, Tah. And Distt. Korba C.G.

---- Appellants.

Versus

1. Daduwa Patel, S/o. Dhal Sai Patel, Aged About 28 Years, R/o Charpara, Baloda, Distt. Janjgir-Champa C.G.
2. Maa Bhawani Transport Qtr. No. 46/394, Infront Of Qt. No. 55/07, Bank Colony, Banki Mongra, Tah. Katghora, Distt. Korba C.G.
3. Bajaj Alliance General Insurance Company Limited, Thru- Branch Manager, Bajaj Alliance General Insurance Company Limited, Branch Office, 1st Floor, Shiv Mohan Bhawan, Pandri Road, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants	:	Mr. Pushpendra Kumar Patel, Advocate.
For Respondent No.3	:	Mr. Ghanshyap Patel, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

23/07/2015

1. Challenge in this appeal is to the award dated 24.09.2014, passed in Claim Case No.40/2013, by the Additional Motor Accident Claims Tribunal (F.T.C.), Korba, District Korba (C.G.) whereby as against the claim made for Rs.34,30,000/-, an award of Rs.6,16,000/- was passed.
2. The appeal is by the claimants.
3. Briefly stated facts of the case as was pleaded by the claimants are that on 21.04.2012, a vehicle i.e. truck bearing No.C.G.12-S-2094, driven by the original non-applicant No.1, Daduwa Patel, in a rash and negligent manner, caused the accident to Umashankar Rathore, while he was going at Birra Road Champa on his motor cycle. It was stated that the deceased was working with G.S.S & Brothers Civil Contractor, PIL Champa, Janjgir-Champa as Supervisor and was earning Rs.10,000/- per month. It was further stated that the accident was caused due to rash and negligent driving of the truck driver. It was further stated that the truck was insured with the non-applicant No.3, Bajaj Alliance General Insurance Co. Therefore, on the different heads an amount of Rs.34,30,000/- was claimed.
4. The non-applicants driver and the owner of the offending vehicle, contended that actually no accident had happened with the truck, and non-applicants have been falsely inculpated. It was further stated that the accident had happened due to rash and negligent

act of the deceased himself. It was further stated that since the truck was insured with the non-applicant No.3, therefore, the compensation if any, is to be made by the insurance company, the non-applicant No.3.

5. The non-applicant No.3, the insurance company submitted that the deceased was not earning any amount and at the time of accident, the driver of the offending truck was not having valid driving license, therefore, it would amount to breach of terms of insurance policy. In a result, the insurance company is not liable to pay any compensation.
6. The learned Claims Tribunal after evaluating the evidences and the documents came to a finding that at the relevant time, the offending vehicle i.e. truck was being driven in rash and negligent manner, which caused the accident. In absence of any challenge to such, the said finding of the learned Claims Tribunal is affirmed.
7. The learned counsel for the appellants would submit that the Tribunal has wrongly assessed the compensation despite the statement that the deceased was getting a salary of Rs.10,000/- and has assessed the income of the deceased to be of Rs.4,500/- per month. He further submits that the future prospects as also under conventional head have not been properly awarded, therefore, the counsel prays for suitable enhancement.
8. Per contra, learned counsel appearing on behalf of the insurance company supported the award and would submit that the award is

well merited which do not call for any interference.

9. I have heard the learned counsel for the parties at length, perused the documents and the evidence on record.
10. Smt. Sushila Bai, the wife of the deceased is examined. She has stated that at the time of the accident, her husband was employed under Thekedar, who was working in Prakash Industries and used to get Rs.10,000/- per month as salary. In the cross-examination, this fact was admitted. No further documents have been filed to establish that her husband was getting salary of Rs.10,000/- per month. Though the document Ex.P/13 was filed, which is handwritten certificate, issued by M/s. Gokul Singh Chandel Contractor, Civil & Labour Supplier, stating that the deceased was employed as Supervisor and was getting Rs.10,000/- per month, but the author of the said document has not been examined. Consequently, the finding which is arrived at by the learned Claims Tribunal, whereby the Tribunal has held that the deceased was a skilled labour and has held the salary of Rs.4,500/- per month, appears to be rightly assessed.
11. Apparently, the learned Claims Tribunal has not added any future income, therefore, taking into account the fact that the deceased was self employed and he was age group of 45 years as would be evident from postmortem report, Ex.P/2, there would be further addition of 30% as future prospects as per the law laid down in case of ***Rajesh & Others Vs. Rajbir Singh & Others*** reported in **(2013) 9 SCC 54**, over and above the income of Rs.4,500/- and thereby the

30% of amount comes to Rs.1,350/- and total salary comes to Rs.5,850/- and thereafter by multiplication of 12, the annual salary works out to Rs.70,200/-.

12. Now coming to the deduction towards personal expenses, the claim petition was preferred by wife and three children of the deceased. As per the principles laid down in case of **Sarla Verma V. D.T.C. (2009) 6 SCC 121**, if the number of dependent family members is 4 to 6, the deduction towards personal expenses should be $\frac{1}{4}$ th, therefore, after deducting $\frac{1}{4}$ towards personal expenses, the annual dependency comes to Rs.52,650/- (70,200 – 17,550). The deceased was aged about 45 years, as has been shown in the postmortem report, Ex.P/2, multiplier 14 would be applicable in this case. Thus the total dependency comes to Rs.7,37,100/- (Rs.52,650 x 14).
13. The learned Tribunal has granted Rs.30,000/- for loss of consortium to the wife this also in the opinion of this Court is to be reassessed, therefore, following the principle laid down in case of **Rajesh & Others Vs. Rajbir Singh** (supra) the amount of compensation is enhanced to Rs.1,00,000/-. Further the Tribunal has granted Rs.20,000/- for loss of love and affection to the children. Taking into the fact that there are three minor children, the said amount is enhanced to Rs.1,00,000/- towards loss of love and affection to the minor children. Further the amount of Rs.20,000/- granted towards funeral expenses is enhanced to Rs.25,000/-. Towards loss of estate, no amount has been awarded by the learned Claims Tribunal, therefore, for the loss of estate, an amount of Rs.50,000/-

is further granted.

14. Therefore, the total compensation is recomputed as under :-

S.No	Heads	Calculation
(i)	Loss of dependency	Rs.7,37,100.00
(ii)	For loss of consortium	Rs. 1,00,000.00
(iii)	For loss of love and affection to the minor children	Rs. 1,00,000.00
(iv)	For funeral expenses	Rs. 25,000.00
(iv)	For loss of estate	Rs. 50,000.00
	Grand Total	Rs. 10,12,100.00

15. Thus the total compensation is recomputed as Rs.10,12,100/-. After deducting Rs.6,16,000/- as awarded by the Tribunal, the enhancement would be Rs.3,96,100/-.

16. In the result, the appeal is allowed in part. The appellants will be entitled to the said sum of Rs.3,96,100/- in addition to what is already awarded by the Claims Tribunal with interest at the rate of 9% per annum on the enhanced claim amount from the date of filing of the claim petition till the date of its realization.

17. The Registry is further directed to communicate the claimants in writing the “amount enhanced in this appeal” as against the award made by the Tribunal below. The said communication be made in Hindi Devanagari language.

18. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge