

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 1217 of 2004**

1. Urmila widow of Late Dayaram Dheemar, aged about 41 years.
2. Parasram son of Late Dayaram, aged about 20 years.
3. Domanlal son of Late Dayaram, aged about 15 years. (Minor) Through: Natural Guardian mother the Appellant No. 1 (Wrongly mentioned as through father Parasram)
4. Duleshwari Bai widow of Late Jethuram, aged about 60 years.

All are residents of village Khapri (Bhaanpuri) Tahsil and District Dhamtari, Chhattisgarh

---- Appellants**Versus**

1. Naresh Kumar son of Shri Raisingh Dhamraw, resident of Risayee para, Dhamtari, Chhattisgarh.
2. Horilal son of Budhiyar Sahu, resident of Kostapara, Dhamtari, Chhattisgarh.
3. The New India Insurance Company Limited, GE Road, Bhilai, District Durg, Chhattisgarh.

---- Respondents

For Appellant : None.
 For Respondent No. 1 : Smt. Indira Tripathi, Advocate.
 For Respondent No. 2 : Shri Vimlesh Bajpai, Advocate.
 For Respondent No. 3 : Shri Sudhir Agrawal, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Judgment on Board

05/08/2016

1. This appeal by the Claimants/Appellants for enhancement of compensation is directed against the award dated 28.08.2004 whereby the learned Additional Motor Accident Claims Tribunal, Dhamtari, (hereinafter called 'the Tribunal') whereby the learned Tribunal has awarded a sum of Rs. 1,32,000/- as compensation.
2. The Claimants/Appellants filed a claim petition before the learned Tribunal alleging that on 11.12.2003, when the deceased-Dayaram was going to

village Sehradabri on his bi-cycle alongwith his friend, near Navin Dhaba, the respondent No. 1 who was driving the vehicle - Matador bearing registration No. CG-05 ZB 0248, rashly and negligently dashed the deceased who succumbed to the injuries on the spot.

3. The learned Tribunal has held that the Appellants/Claimants have failed to prove income of the deceased and therefore, applying Schedule II, he has assessed the income to be Rs. 15,000/- per annum. In my view, this is totally erroneous. Schedule II only applies when the claim petition is filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act'). If a petition is filed under Section 166 of the Act and if the negligence is proved, then ordinary law relating to compensation is applied. It stands proved on record that the deceased was doing some work of fisheries. Even if he was not doing any work, he being an able bodied person, in the year 2003, he would have been earning at least RS. 100 per day or Rs. 3000/- per month. He was a married man with two children and therefore this Court can reasonably presume that his income would not have been less than Rs. 3000/- per month in the year 2003.
4. In *Sarla Verma (Smt.) & Others v. Delhi Transport Corporation* {(2009) 6 SCC 121}, it has been held that 30% of the income has to be added for his the future prospects where the deceased is aged 40 to 50 years and therefore, the income of the deceased works out to Rs. 3,900/-. The Claimants are the widow, two children and mother. Since there are four claimants, only 1/4 will have to be deducted towards the personal expenses of the deceased which leaves the monthly dependency at Rs. 2,925/- per month or Rs. 35,100/- per annum. Since the deceased was aged about 45 years, the relevant multiplier would be 14 and the compensation works out to Rs. 4,91,400/-. In addition thereto, the Claimants are held entitled to

another sum of Rs. 10,000/- for funeral expenses and Rs. 20,000/- to the widow for loss of consortium. The total compensation is accordingly assessed at Rs. (4,91,400+10,000+20,000) = 5,21,400/-.

5. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs. 1,32,000/- to Rs. 5,21,400/- i.e. by Rs. 3,89,400/-. On the amount of compensation so awarded, the Claimants shall also be entitled to interest at the rate of 9% per annum from the date of filing of the claim petition till payment/deposit of the awarded amount. The Insurance Company is directed to deposit the enhanced amount of compensation alongwith proportionate interest thereupon before the learned Tribunal within a period of four months from today. Obviously, the Insurance Company shall be entitled to adjust the amount, if any which it has already paid or deposited.

6. The total amount of compensation i.e. Rs. 5,21,400/- is however apportioned as follows:

(a) Urmila (Widow)	: Rs. 2,21,400/-
(b) Parasram	: Rs. 1,00,000/-
(c) Domanlal	: Rs. 1,00,000/-
(d) Duleshwari Bai	: Rs. 1,00,000/-

7. The appeal is disposed of in the aforesaid terms. No order asto costs.

8. Send down the lower Court records forthwith.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE