**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**MAC No. 1352 of 2007**

1. Smt. Shakun Bai Sahu Wd/o Late Tulsiram Sahu.
2. Kamalnarayan Sahu S/o Tulsiram Sahu, aged about 18 years.
3. Ku. Fuleshwari Sahu D/o Late Tulsiram Sahu, aged about 17 years.
4. Ku. Monika Sahu D/o Late Tulsiram Sahu, aged about 14 years.
5. Ku. Kushtala Sahu D/o Late Tulsiram Sahu, aged about 13 years.
   Appellants No. 3 to 5 are minors guardian through – their mother Smt.Shakun Bai Sahu.
6. Khilawan Ram Sahu S/o Late Ledga Ram Sahu (Father), aged about 63 years.
7. Smt Khedi Bai Sahu W/o Khilawan Ram Sahu (Mother), aged about 60 years.
   All are residents of Village Devpura, near Sahu Fabricators, Dhamtari Road, Raipur, Tahsil & District Raipur (Chhattisgarh).

**---- Appellants**

**Versus**

1. Rajkishor Prasad S/o Girja Prasad, aged about 40 years, R/o Siwariya, Police Station Mandhaura, District Chhapra (Bihar) At present – Qtr.No.7 Guripara, behind Shiv Temple, Kolkata, 70015.
2. Rajeshwar Rai S/o Late Deeplal Rai, R/o 31, Coal Depo, Sealdah Railway Siding Kolkata, 70015 (West Bangal).
3. National Insurance Co. Ltd. Akashganga, Supela, Bhilai, Tah & Distt. Durg.(Chhattisgarh)

**---Respondents**

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| For Appellants | : | Shri Jitendra Gupta, Advocate |
| For Respondent No.3/ Insurance Company | : | Shri B.N.Nande, Advocate |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**13/09/2017**

1. Present is an appeal under Section 173 of the Motor Vehicle Act preferred by the claimants seeking for enhancement of the award dated 10/05/2007 passed by 1st Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.02/2006.

2. Vide the said impugned award, the Tribunal has granted compensation of Rs.11,89,540/- along with interest @ 6% per annum from the date of application. It is this award which is under challenge.

3. The contentions of the counsel for the appellant is that, the compensation awarded is on the lower side. According to the counsel for the appellant, the Tribunal has erroneously taken wage of Rs.11,215/- as the net wage of the deceased whereas the monthly income of the deceased was shown at Rs.12,830/- in the salary slip of the month preceding the date of

accident produced before the Tribunal. The deductions which has been accepted by the Tribunal is improper. All the deductions made are also part of salary for all practical purposes and therefore compensation ought to have been calculated by taking monthly income as Rs.12,830/-. It was further contended that, the Tribunal has not taken into account the income from future prospects while quantifying the compensation.

4. The counsel for the Insurance Company however opposing the appeal submits that, the impugned award does not warrant any interference as the Tribunal has duly considered the evidence which have come on record and then reached to the conclusion and therefore the appeal deserves to be rejected holding that the compensation awarded is just and reasonable.

5. Having heard the rival contentions put forth on either side and on perusal of record, this court has no hesitation in reaching to the conclusion that, the deductions made by the Tribunal while taking the income for calculating the compensation to be erroneous for the reason that, the deductions made were those deductions which ultimately were part of the income and which were deducted on account of certain advance money which has been taken by the petitioner, otherwise which it would had been payable to the petitioner as a part of the payable income.

6. Likewise, this court also finds that, the Tribunal has not taken into account the future prospects while calculating the compensation. Further, the amount of compensation under conventional head is also on the lower side. If we take Rs.12,830/- as a monthly income which would make yearly income of the deceased to be Rs.1,53,960/- and if 1/5th of the same is deducted towards personal expenses, balance of amount would be Rs.1,23,168/-. If we add 30% of the said amount i.e. 36,950/- towards future prospects, the total amount reaches to Rs.1,47,118/- of which if 10% is deducted towards Income Tax, the amount would be Rs.14,070/- which would make gross amount at Rs.1,33,048/- which if multiplied by applying multiplier of 13, the amount would be Rs.17,29,624/-.

7. This court also finds that, the amount under the conventional head is on the lower side. Considering the judgment of Hon'ble Supreme Court passed on this head in the recent decisions, this court quantifies the amount of compensation under the conventional head at a lump-sum amount of Rs.1,25,000/- which makes the total compensation payable at Rs.18,54,624/-.

8. It is ordered accordingly. The claimant shall be entitled for total compensation of Rs.18,54,624/- instead of Rs.11,89,540/-. The enhanced

amount shall also carry interest at the same rate as has been awarded by the Tribunal.

9. However, it is observed that, the amount of money deducted towards Income Tax i.e. Rs.14,070/- shall be deposited by the Insurance Company to the Income Tax Department.

10. With the aforesaid observation, the appeal stands allowed and disposed off.

**Sd/-**
**(P. Sam Koshy)**
**Judge**

Sumit