**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 352 of 2012**

1. Smt. Albina Kujur Wd/o late Shri Sharan Kujur, aged about 48 years

2. Ku. Gagan Premi D/o late Shri Sharan Kujur, aged about 22 years

3. Anmol Kujur S/o late Shri Sharan Kujur, aged about 20 years

4. Anurag Kujur S/o late Shri Sharan Kujur, aged about 17 years

Appellant 4 is minor through natural guardian – mother Smt. Albina Kujur

All R/o village Godhanpur, Thana, Rural Gandhinagar, Tahsil Ambikapur, District Sarguja, CG

**---- Appellants/Claimants**

**Versus**

1. Smt. Nisha Anand W/o Shri Kewal Anand, aged about 50 years, Occupation – Truck Owner, Housing Board Colony, Jabalpur Road Katni, District Katni (MP)

2. Sudarshan Prasad Mahobiya S/o Dhanai Mahobiya R/o Village Lakhakhera, Tahsil and District Katni, MP

3. National Insurance Co. Ltd. Near Katayghat Turning Jabalpur Road, Barganwa, District Katni MP **---- Respondents**

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For Appellants - Shri Sunil Sahu, Advocate.
For Respondents 1& 2 - None appeared.
For Respondent No.3 - Shri Ratan Pusti, Advocate

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**Hon'ble Shri Justice Pritinker Diwaker and Hon'ble Justice R.P. Sharma**

**Order on Board**

**17 /07/2017**

This appeal arises out of the award dated 22.10.2011 passed by Additional Motor Accident Claims Tribunal (for short the "Tribunal") Ambikapur in Claim Case No. 115/2011 awarding a compensation of Rs. 14,60,024/- in favour of the appellants/claimants for the death of Shri Sharan Kujur.

2. Facts of the case in brief are that on 31.1.2009 PM when the deceased was going on his motorcycle bearing registration No. CG-15/D-2389 and when he reached the Chandi Chowk area, a ten-wheeler truck bearing registration No. MP-21-HO-317 driven by respondent No.2 herein in a rash and negligent manner came there and hit him as a result of which he died on the spot. A claim petition was filed by the appellants/claimants who happen to be the legal heirs of the deceased claiming a compensation of Rs. 31,73,656/- *inter alia* pleading that the deceased at the relevant time was aged about 52 years, he was was working as a head master in a government primary school hotel in the village and earning Rs. 16,398 per month.

3. Pleadings of the claimants have, however, been denied by the respondent/insurance company.

4. After evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs. 14,60,024/- in favour of the appellants/claimants taking the gross income of the deceased as Rs. 16,398 per month and applying the multiplier of 11 and deducting 1/3rd towards his personal expenses. Hence this appeal for enhancement.

5. Counsel for the appellants/claimants submits that the finding recorded by the Tribunal in not accepting the gross income of the deceased which was pleaded in the claim petition as Rs. 17,848/- is wholly in contravention of the settled legal position and therefore liable to be set aside. He further submits that the amount awarded under the conventional heads is also quite inadequate and deserves to be suitably enhanced.

6. On the other hand, counsel for the respondent/insurance company supports the award impugned.

7. Heard counsel for the parties and perused the documents on record.

8. From the pleadings of the respective parties and the overall evidence on record it is clear that the accident occurred with the offending vehicle which was insured with respondent No.3 and was being driven by respondent No. 2. Evidence further goes to show that after being hit by the offending vehicle Shri Sharan Kujur died on the spot. Having thus seen the record there is no hesitation in the mind of this Court that the Tribunal has committed a gross legal error in not accepting the monthly income of the deceased as pleaded in the claim petition. While dealing with the issue as to how the income of the victim has to be taken while awarding compensation, it has been held by the Apex Court in the matter of ***National Insurance Co. Ltd. v. Indira Shrivastava and others 2008 AIR SCW 143*** that the term "income" has different connotations for different purposes and having regard to the change in social conditions it must be considered by a Court of law not only having regard to pay packet the employee carries home at

the end of the month but also the other perks which are beneficial to the members of the entire family. Thus the monthly of Rs. 17,848/- rounded off as Rs. 18,000/- as pleaded and proved by the claimants is taken as it is. Annual income of the deceased thus comes to Rs. 2,16,000/-.

9. Accordingly, the monthly income of the deceased is taken to be Rs. 18,000/- which makes the annual income as Rs. 2,16,000/- and after deducting 1/4th towards the standard deduction on the deceased himself, the annual loss of dependency comes to Rs. 1,62,000/- which by applying the multiplier of 11 rises to Rs. 17,82,000/- as the total loss of dependency which the deceased must have spent on the dependents. At the same time, the amount awarded under the conventional heads also appears to be insufficient and being so is required to be enhanced suitably. The amount awarded by the Tribunal and the one enhanced by this Court are clear from the following table:

| Head | Amount awarded | Amount enhanced |
|---|---|---|
| Loss of consortium & love and affection | 15,000/- | 1,50,000/- |
| Funeral expenses | 2,000/- | 25,000/- |
| Loss of estate | nil | 25,000/- |
| | Total | 2,00,000/- |

10. Thus, the total compensation including the amount awarded on conventional heads comes to Rs. 19,82,000/- i.e. (17,82,000/- +200,000/-) rounded off at Rs. 20,00,000/- for which the claimants are entitled to receive with interest @ 9% per annum. The amount received by the claimants, if any, shall be adjustable in the enhanced sum.

11. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

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| Sd/- | Sd/- |
| (Pritinker Diwaker)<br>Judge | (R.P. Sharma)<br>Judge |

Jyotishi