

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.812 of 2008**

1. Durga Prasad @ Kaalu S/o Late Tati Ram, aged 23 years.
 2. Sanni @ Guddu S/o Late Tati Ram, aged 18 years.
- Both are R/o Bhelwa Paddar, Opposite Aangan Baari, Tahsil & Police Station Kondagaon, District Bastar (C.G.).

---Appellants**Versus**

1. Nilesh Kumar S/o Purushottam Bisayee, aged 21 years, Near Forest Barrier, Aadawal, Tahsil Jagdalpur.
2. D.S.Korram S/o T.R.Korram, R/o Village Aadawal, Tahsil Jagdalpur, District Bastar (C.G.).
3. The Oriental Insurance Company Limited, Branch Main Road, Jagdalpur, District Bastar (C.G.).

---Respondents

For appellants	:	Shri R.N.Jha, Advocate.
For respondent No.1	:	Shri Subhash Yadav, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/11/2017**

1. Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 09/08/2007 passed by the learned Upper Motor Accident Claims Tribunal (F.T.C.), Kondagaon, District Bastar in Motor Accident Claim Case No.96/2007.
2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has awarded the compensation only to the extent of no fault liability of Rs.50,000/- plus the incidental expenses of Rs.10,000/- totaling Rs.60,000/- along with interest @ 6% per annum.
3. The facts of the case is that, the deceased Bhagwati met with an accident on 07/02/2006 when she was hit by a Tata Sumo Jeep bearing registration No.CG-15-A-1309 as a result of which she received grievous injuries to which she succumbed after about ten months of treatment on 07/02/2006. The said Tata Sumo was owned by the respondent No.2 and was driven by the

respondent No.1 and was insured with the respondent No.3/Insurance Company.

4. The reason for restricting the compensation to the extent of only no fault liability by the Tribunal is that, the deceased being the housewife was dependent on her husband Tati Ram who was alive on the date of the accident who had died a natural death before the claim application was filed and that since the claimants as well as the deceased were dependent on the Tati Ram, the Tribunal did not award any compensation towards loss of dependency and restricted it to Rs.50,000/- under the no fault liability. The counsel for the appellant submits, that the finding of the Tribunal is bad in law and deserves to be set aside and the claimants be granted suitable compensation.

5. The counsel for the Insurance Company however opposing the appeal submits, that since admittedly, the deceased was dependent on her husband and that the claimants also were dependent on the earning of their father, the finding of the Tribunal does not warrant any interference and the compensation awarded is just and reasonable.

6. Having heard the contentions put forth on either side and on perusal of record what is undisputed is the date of accident to be 07/02/2006, the deceased having died because of the injury sustained by the accident on 07/02/2006, the claimants being the sons of the deceased. Another fact which is not in dispute is that, before the claim application could be filed, the father of the claimants also died a natural death on 15/02/2006.

7. Undisputedly, the deceased in the instant case did not have a permanent source of income except for the fact, that she was a housewife/homemaker.

8. At this juncture it would be relevant to refer to the decision of the Hon'ble Supreme Court in the case of ***Arun Kumar Agrawal & Anr. Vs. National Insurance Company Limited*** [{2010} 9 SCC 218] wherein the Supreme Court in paragraphs 26, 35 & 50 has held as under:-

26:- “ In England the courts used to award damages solely on the basis of pecuniary loss of family due to the demise of the wife. In

India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.”

35:- “It is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/mother, who does not have a regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by the wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife”.

50:- “ Women are generally engaged in homemaking, bringing up children and also in production of goods and services which are not sold in the market but are consumed at the household level.

Thus, the work of women mostly goes unrecognised and they are never valued. It is well known that women make significant contribution at various levels including agricultural production by sowing, harvesting, transplanting and also tending cattle and by cooking and delivering the food to those persons who are on the field during the agriculture season ”.

9. This view of the Supreme Court has been further reiterated in the case of ***Jitendra Khimshankar Trivedi & Ors. Vs. Kasam Daud Kumbhar & Ors.*** **[{2015} 4 SCC 237]** wherein the Supreme Court in paragraph 10 has held as under:-

“Considering the nature of the work and the evidence of the claimants witnesses, father-in-law and mother-in-law of the deceased, had the deceased been alive she would have earned not less than Rs.3000 per month. Even assuming that the deceased was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a homemaker. It is hard to monetise the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife of the house is invaluable and that it cannot be computed in terms of money. A housewife/homemaker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the homemaker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased as the homemaker, it is reasonable to fix her income at Rs.3000 per month.”

10. Taking into consideration the aforesaid two authoritative decisions of the Supreme Court this court has no hesitation in reaching to the conclusion, that

the finding of the Tribunal is erroneous in not properly assessing the income of the deceased.

11. Considering the view of the Supreme Court this court assesses the income of the deceased at the time of the accident at Rs.3,000/- per month i.e. Rs.36,000/- yearly. Considering the recent larger bench decision of the Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & Ors. (SLP Civil No. 25590/2014, decided on 31/10/2017)***, this court assesses the income under future prospects at 30% which would make it Rs.46,800/- of which if 1/3rd is deducted towards personal expenses, the remaining amount would be Rs.31,200/- which if multiplied by applying multiplier of 15, the amount would reach to Rs.4,68,000/-. It is ordered accordingly, that the claimants shall be entitled for the compensation of Rs.4,68,000/- towards loss of dependency instead of Rs.50,000/- as assessed by the Tribunal.

12. So far as the compensation under other heads are concerned, considering the facts and circumstance of the case, particularly, the fact that the claimants have also lost their father immediately thereafter, this court is of the opinion that ends of justice would meet if a lump sum compensation of Rs.70,000/- is granted under conventional heads instead of Rs.10,000/- as awarded by the Tribunal.

13. Thus, the total compensation payable to the claimants would be Rs.5,38,000/- instead of Rs.60,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

14. The appeal of the claimants thus stands allowed and disposed off.

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