

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 627 of 2007**

1. Indra Bai, aged 30 years, W/o late Shiv Lal, by Caste, Yadav
2. Ku. Priyanka, aged 5 years, D/o late Shiv Lal, by Caste, Yadav
3. Raju, Age 4 years, S/o late Shiv Lal, by Caste, Yadav
4. Mannu, Age 2 and ½ years S/o late Shiv Lal, by Caste, Yadav
5. Smt. Parvatiya Bai, Age 65 years, Widow of Dheer Sai, By Caste-Yadav.

(Appellants No.2 to 4 are minors through mother appellant No.1-Indra Bai).

All are R/o Village Kunj Nagar, PS Jainagar, Tehsil Surajpur, Distt. Surguja (CG).

---- Appellants**Versus**

Hit Narayan Sahu S/o Lalu Sahu, Age 33 years By Caste-Teli, R/o Village Lakhanpur (Tindharvapara) At Present R/o Railway Station P.S. & Tahsil Surajpur, Distt. Surguja (CG).

---- Respondent**MAC No. 473 of 2007**

Hit Narayan Sahu S/o Lalu Sahu, Age 33 years By Caste-Teli, R/o Village Lakhanpur (Tindharvapara) At Present R/o Railway Station P.S. & Tahsil Surajpur, Distt. Surguja (CG).

---- Appellant**Versus**

1. Indra Bai, aged 30 years, W/o late Shiv Lal,
2. Priyanka, aged 5 years, D/o late Shiv Lal,
3. Raju, Age 4 years, S/o late Shiv Lal,
4. Mannu, Age 2 and ½ years S/o late Shiv Lal,
5. Smt. Parvatiya Bai, Age 65 years, Widow of Dheer Sai, By Caste-Yadav.

(Appellants No.2 to 4 are minors through mother appellant No.1-Indra Bai)

All are R/o Village Kunj Nagar, Station Para, Thana Rainagar, Tehsil Surajpur, Distt. Surguja (CG).

---- Respondents

For Claimants	:	Shri JA Lohani, Advocate.
For Owner-Driver	:	Smt. Renu Kochar, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board**

12.10.2017

1. By this common judgment both the appeals are being disposed of as common facts & issues are involved in these appeals which arise out of the same accident.
2. Both the appeals under Section 173 of the Motor Vehicles Act have been filed against the award dated 09.02.2007 passed by the IInd Additional Motor Accident Claims Tribunal, Surajpur, in Claim Case No.32/2006. Vide the said impugned award, the Tribunal has awarded a compensation of Rs.2,52,000/- alongwith interest @ 6 percent per annum from the date of application.
3. MAC No. 627 of 2007 has been filed by the claimants seeking enhancement of compensation whereas, MAC No.473 of 2007 has been filed by the owner challenging the award on the ground that he has been falsely implicated in the case and that there is no evidence to show that vehicle belonging to the owner was infact involved in the accident.
4. The facts of the case is that, deceased Shiv Lal, aged about 32 years, a Rickshaw Puller, while pulling Rickshaw on 26.01.2005 is said to have been dashed by a Jeep owned by the appellant-Het Narayan (in MAC No. 473 of 2007). The claimants i.e. widow of deceased Shiv Lal and three minor children and mother of the deceased had filed a claim application under Section 166 of the MV Act. The Tribunal considering the evidence which have come on record particularly the evidence of witnesses who is said to have seen the occurrence, reached to the conclusion of awarding

compensation of Rs.2,52,000/- to the claimants.

5. So far as appeal of the claimants is concerned, the contention is that, the Tribunal has not properly assessed the income of the deceased and the compensation awarded is on the lower side. So also the Tribunal has not considered the income towards future prospects while quantifying the compensation. Likewise, the compensation under the conventional heads also is extremely low and prayed for suitable enhancement.
6. So far as the contention of appellant-owner-Het Ram is concerned, he submits that in the instant case the accident has not occurred from his Jeep and that he has been falsely implicated in the case. Non involvement of his Jeep is also established from the order sheet of the Tribunal while rejecting the claim application under Section 140 of the MV Act. He further submits that since the deceased did not meet with an accident with the Jeep of Het Ram, fastening of liability of payment of compensation upon him in respect of claimants is bad in law and the same deserves to be set aside. He further submits that he himself has preferred a separate appeal in this regard challenging the same award.
7. For the sake of convenience, we shall take the appeal of the owner first i.e. MAC No. 473 of 2007.
8. The contention of the owner that there is no sufficient proof with regard to involvement of his Jeep is not acceptable for the reason that a perusal of records would show that except for oral statements made by the owner and two other persons, there is no further

evidence in this regard. On the contrary, there is a criminal case registered against the owner who himself was driving the Jeep at the time of accident. The said criminal case still being pending is a sufficient proof to draw an inference that the accident did occur from the vehicle belonging to the appellant- Het Ram. In addition, what also cannot be brushed aside is the witnesses who have been examined in respect of claimants namely Mohd. Nasir, Md. Zaved and Shahbaj, the three persons said to have witnessed the accident and deposed before the Tribunal proving the case of the claimants. Thus, this court has no hesitation in reaching to the conclusion that applying the principle of preponderance of probability, the findings of Tribunal cannot be said to be either illegal or infirm.

9. Thus, the appeal filed by the owner i.e. MAC No.473 of 2007 being devoid of merit deserves to be and is accordingly rejected.
10. So far as the appeal of the claimants i.e. MAC No. 627 of 2007 is concerned, indisputably in the year, 2005 even an unskilled labour would be drawing more than Rs.100/- a day. In the instant case there is an evidence before the Tribunal that the deceased was a Rickshaw puller and he used to take students to the School regularly and he was earning more than Rs.6000/- in a month. Thus, under no such circumstances could the Tribunal have taken the yearly income at Rs.15000/-. This court finds the said assessment of the income of the Tribunal to be unreasonably low and accordingly assesses the income of the deceased at Rs.36,000/- instead of Rs.15,000/- and proceeds to quantify the compensation. Further, the claimants are

also entitled for 50 percent of income towards future prospects.

11. Accordingly, accepting the annual income of the deceased at Rs.36,000/- if 50 percent of it is added towards future prospects, the total income would become Rs.54,000/-. Considering the total number of claimants if 1/4th is deducted towards personal expenses, the income would become Rs.40,500/-, which if multiplied by applying the multiplier of 16, the compensation would reach to Rs.6,48,000/-. Thus, it is ordered that the claimants shall be entitled for Rs.6,48,000/- for loss of dependency. In addition, considering the period of accident, the claimants are also entitled for a lump sum compensation under the conventional heads at Rs. 52,000/- instead of Rs.12,000/- as assessed by the Tribunal. Thus, the total compensation payable to the claimants would become Rs.7,00,000/- instead of Rs.2,52,000/-. It is ordered accordingly.
12. The said enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.
13. Accordingly, MAC No.627 of 2007 filed by the claimants is allowed and MAC No. 473 of 2007 filed by the owner is dismissed.

Sd/-
(P. Sam Koshy)
Judge