

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 97 of 2014**

1. Durbal S/o Ghasi Ram Netam Aged About 50 Years R/o Village And Post And P.S. Indagaon, Tah. Mainpur, Distt. Gariyaband C.G.
2. Nathuram S/o Durbal Netam Aged About 25 Years R/o Village And Post And P.S. Indagaon, Tah. Mainpur, Distt. Gariyaband C.G.
3. Vedvyas S/o Durbal Netam Aged About 18 Years R/o Village And Post And P.S. Indagaon, Tah. Mainpur, Distt. Gariyaband C.G.
4. Anadi W/o Jagatram Aged About 31 Years D/o Durbal Netam, R/o Dumaghat, Tah. Mainpur, Distt. Gariyaband C.G.
5. Gunadi W/o Arjun Aged About 29 Years D/o Durbal Netam, R/o Kokdi, Gram Panchayat- Nayapara, Post- Amlipadar, Tah. Mainpur, Distt. Gariyaband C.G.
6. Fagani W/o Balmat Aged About 27 Years D/o Durbal Netam, R/o Chalnadar, Post- Gohrapadar, Tah. Mainpur, Distt. Gariyaband C.G.

**---- Appellants****Versus**

1. Himanchal Bagh S/o Karunakar Bagh Aged About 22 Years R/o Sandhi Colliery, P.S. Dharamgarh, Distt. Kalahandi (Orissa)
2. Smt. Chandar Devi W/o Mahendra Singh R/o Kabir Nagar, Raipur, Tah. And Distt. Raipur C.G., Present R/o Dharamgarh, P.S. And Tah. Dharamgarh, Distt. Kalahandi (Orissa)
3. The Oriental Insu.Co.Ltd. Thru- Branch Manager, Branch Office D.O. 2, Chawala Complex, Devendra Nagar, Raipur, Tah. And Distt. Raipur C.G.
4. Chintamani S/o Shanker Lal Yadav Aged About 25 Years R/o Village And Post And P.S. Indagaon, Tah. Mainpur, Distt. Gariyaband C.G.
5. Shanker Lal Yadav S/o Mangalu Ram Yadav R/o Village And Post And P.S. Indagaon, Tah. Mainpur, Distt. Gariyaband C.G.
6. Chola Mandalam General Insu.Co.Ltd. Thru- Incharge Officer Chola Mandalam General Insu.Co.Ltd., Devendra Nagar, Raipur, Tah. And Distt. Raipur C.G.

**---- Respondents**

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For Appellants : Shri Anil Gulati, Advocate.  
For Respondent No.7 : Shri Sandeep Shrivastava, Advocate.

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**Hon'ble Shri Justice Pritinker Diwaker**  
**Hon'ble Shri Justice Ram Prasanna Sharma**

**Order On Board**

**By Pritinker Diwaker, J**

**03/08/2017**

1. This appeal arises out of the award dated 04.03.2013 passed by Additional Motor Accident Claims Tribunal (for short the "Tribunal") Gariyaband in Claim Case No.38/2012 awarding a compensation of Rs.2,89,000/- in favour of the appellants/claimants for the death of Jahajo Bai.

2. Facts of the case in brief are that on 12.01.2012 the deceased Jahajo Bai was sitting in the Trax Cruiser bearing registration No.C.G.-04-T-7563 and was going towards her destination. When the Trax Cruiser reached near Madam Muda turn, a truck Tata 1109 bearing registration No.CG-04-JA-7312 driven by respondent No.1 herein, in a rash and negligent manner, came from opposite side and head on collision took place between 2 four wheelers as a result of which Jahajo Bai 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.21,00,000/- *inter alia* pleading that the deceased at the relevant time was

aged about 48 years, she was working as labour and earning Rs.125/- per day.

3. Pleading 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.2,89,000/- along with interest @ 7.5% per annum in favour of the appellants/claimants assessing the age of the deceased as 55 year on the basis of postmortem report, taking the notional income of the deceased as Rs.-100/- per day, applying the multiplier of 11 and deducting 1/3rd towards her personal expenses. Hence this appeal for enhancement.

5. Counsel for the appellants/claimants submits that the Tribunal has erred in law in not awarding adequate compensation to the claimants. He also submits that the age of the deceased has wrongly been assessed by the Tribunal and according to the claim petition, she was aged 48 year. He further submits that the notional income has been considered by the Tribunal as Rs.36,000/- per annum whereas it ought to have been considered Rs.72,000/- per annum. The Tribunal has also not considered the loss of future prospect. It has been also submitted that the amount awarded under the conventional heads is also quite inadequate and deserves to be suitably enhanced.

6. On the other hand, supporting the impugned award it

has been argued by counsel for the respondent/insurance company that as per the postmortem report, the deceased was aged 55 years and there is no contrary evidence available on record thus the finding with regard to age of the deceased is in accordance with law. He also submits that since the deceased was 55 year of age at the time of accident, the claimants/appellants are not entitled for any sum under the head future prospect.

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

8. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

9. Now we shall examine as to whether the compensation of Rs.2,89,000/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

10. True, the claimants/appellants pleaded that deceased used to earn Rs.125/- per day and Rs.3,750/- month by working as labour, no cogent and reliable evidence was led before the Tribunal to establish the income of the deceased to the extent of Rs.3,750/- per month. Therefore, we do not find any fault in the approach of the Tribunal in discarding the

appellants' evidence about the income of the deceased. Nevertheless, the income of the deceased assessed by the Tribunal at Rs.3,000/- per month and Rs.36,000/- per annum in the year 2012 is certainly on the lower side and requires reconsideration. That apart, Considering the evidence available on record, we are of the view that the age of the deceased as 55 years has rightly been assessed by the Tribunal and accordingly we proceed to decide the claim.

11. Considering that deceased Jahajo Bai, on the date of accident, was aged about 55 years, we are of the opinion that she could have easily earned Rs.200/- per day in the year 2012 by working as labour. We, therefore, propose to recompute the compensation taking the notional income of the deceased at Rs.6,000/- per month and Rs.72,000/- per annum and after deducting 1/3rd towards her personal expenses the annual loss of dependency comes to Rs.48,000/-. After applying the multiplier of 11, the total loss of dependency is assessed at Rs.5,28,000/- (48,000 x 11) on the basis of guidelines/principles adopted in the case of **Sarla Verma V. Delhi Transport Corporation and another - (2009) 6 SCC 121.** 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 | 10,000/-       | 25,000/-        |
| Loss of Estate     | 10,000/-       | 25,000/-        |
| Mental agony       | Nil            | 25,000/-        |
| Funeral Expenses   | 5,000/-        | 25,000/-        |
|                    | <b>Total</b>   | 1,00,000/-      |

12. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.6,28,000/- (5,28,000/- + 1,00,000/-) for which the claimants are entitled to receive as compensation for the death of deceased Jahajo Bai. Since the Tribunal has already awarded Rs.2,89,000/-, after deducting the same the claimants/appellants are entitled for enhanced amount of Rs.3,39,000/-. This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization. The amount received by the claimants, if any, shall be adjusted in the enhanced sum.

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

Sd/-  
**(Pritinker Diwaker)**  
**Judge**

Sd/-  
**(Ram Prasanna Sharma)**  
**Judge**