

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 333 of 2013**

1. Smt. Nirmalal Hidko W/o Late Shobhiram Hidko, Aged About 41 Years R/o Gadagori, P.S. And Tah. Charama, Distt. North Bastar Kanker (C.G.)
2. Miss Sivani D/o Late Shobhiram Hidko, Aged About 14 Years (Minor), Thru- Mother Smt. Nirmala Hidko, R/o Gadagori, P.S. And Tah. Charama, Distt. North Bastar Kanker (C.G.)
3. Miss Tusharika D/o Late Shobhiram Hidko, Aged About 12 Years (Minor), Thru- Mother Smt. Nirmala Hidko, R/o Gadagori, P.S. And Tah. Charama, Distt. North Bastar Kanker (C.G.)
4. Miss Rashmi D/o Late Shobhiram Hidko, Aged About 10 Years (Minor), Thru- Mother Smt. Nirmala Hidko, R/o Gadagori, P.S. And Tah. Charama, Distt. North Bastar Kanker (C.G.)

---- Appellants**Versus**

1. Jagatram S/o Parasuram Markam, Aged About 27 Years R/o Devbharan, P.S. Raydhar, Distt. Navrang (Orissa), Presently R/o Rajendra Nagar Ward, Bhaduguda, Distt. Jagdalpur C.G.
2. A. Surendra Sharma S/o Jageram Sharma R/o M.G. Road, Raigarh, Distt. Raigarh C.G.
- B. Gagan Sahu S/o Kishore Sahu, aged about 32 years, R/o Balenga, P.S. Bhanpuri, Distt. Bastar C.G.
3. The Oriental Insu. Co. Ltd. Near Adarsh Bal Mandir, Main Road, Dhamtari, Distt. Dhamtari C.G.

---- Respondents

For Appellants	:	Shri P.K. Tulsyan, Advocate.
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Raj Awasthy, Advocate.

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

Order On Board

By Pritinker Diwaker, J

18/07/2017

1. This appeal arises out of the award dated 20.11.2012 passed by Motor Accident Claims Tribunal (for short the "Tribunal") North Bastar Kanker, in Claim Case No.85/2010 awarding a compensation of Rs.13,78,600/- in favour of the appellants/claimants for the death of Shri Shobhiram Hidko.

2. Facts of the case in brief are that on 17.01.2010 when the deceased, aged about 52 years, was going to Bahigaon from Keshkal on his motorcycle and when he reached near Bangali Hotel, a truck bearing registration No.CG-13-D-0179 driven by respondent No.1 herein in a rash and negligent manner came there and dashed him. He was immediately taken to hospital, however, he succumbed to his injuries. A claim petition was filed by the appellants/claimants who happen to be the legal heirs of the deceased claiming a compensation of Rs.26,52,509/- *inter alia* pleading that the deceased died due to negligent driving of the offending vehicle, at the relevant time he was aged about 52 years, working as Assistant Development Extension Officer in Janpad Panchayat, Charama and his monthly gross salary was Rs.21,591/- per month.

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.13,78,600/- along with interest @ 6% per annum in favour of the appellants/claimants taking the net income of the deceased as Rs.19,341/- per month and applying the multiplier of 11 and deducting 1/2 towards his personal expenses. Hence this appeal for enhancement.

5. Counsel for the appellants/claimants submits as under:-

- That the finding recorded by the Tribunal is not in accordance with law and the amount awarded is on the lower side.
- That the Tribunal has erred in law in deducting the amount towards personal expenses on the ground that compassionate appointment was already given to appellant No.1. It has been argued that in view of decision in the matter of **Vimal Kanwar & Ors. V Kishore Dan & Ors**¹ compassionate appointment is also not liable for deduction for determination of compensation under the Motor Vehicles Act.
- That monthly income of the deceased has erroneously been calculated by the Tribunal. Likewise, under conventional heads also appropriate amount has not

1 AIR 2013 SC 3830

been awarded.

6. On the other hand, it has argued on behalf of the counsel for respondent No.3 that in the facts and circumstances of case, the compensation awarded by the Claims Tribunal is just and proper and requires no further enhancement.

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.13,78,600/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

10. 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.1. Evidence further goes to show that offending vehicle was being driven in rash and negligent manner. There is evidence on record that the gross salary of the deceased was Rs.21,591/-. It is settled position of law that while calculating the salary of the deceased, only the gross salary is to be

calculated and not net salary. Thus, the monthly gross salary of Rs.21,591/- as pleaded and proved by the claimants is taken as it is. Annual income of the deceased thus comes to Rs.2,59,092/-.

11. Accordingly, the monthly income of the deceased is taken to be Rs.21,591/- which makes the annual income as Rs.2,59,092/- and after deducting Rs.7,425/- towards income tax, it comes to Rs.2,51,667/-. Further, after deducting 1/4 towards the standard deduction on the deceased himself, the annual loss of dependency comes to Rs.1,88,750/- which by applying the multiplier of 11 rises to Rs.20,76,250/- as the total loss of dependency which the deceased must have spent on the dependents. The Tribunal has awarded Rs.52,157/- and Rs.5,000/- towards medical expenses and travelling expenses respectively, thus, total comes to Rs.21,33,407/-. That apart, the amount awarded under the conventional heads also appears to be on lower side. Thus, keeping in view all these things, this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The claimants/appellants are entitled for compensation in the following manner:-

Head		Amount enhanced
Loss of consortium	:	1,00,000/-
Love and affection	:	50,000/-
Mental agony	:	25,000/-
Funeral	:	25,000/-
	Total	2,00,000/-

12. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.23,33,407/- i.e. (21,33,407/- + 2,00,000/-) rounded off at Rs.23,33,000/- for which the claimants are entitled to receive as compensation for the death of deceased Shobhiram Hidko. Since the Tribunal has already awarded Rs.13,78,600/-, after deducting the same the claimants/appellants are entitled for enhanced amount of Rs.9,54,400/-. 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