

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1097 of 2013

1. Smt. Sakun Chandrawanshi W/o Jalesh Chandrawanshi Aged About 39 Years
2. Jalesh Chandrawanshi S/o Shivdeen Chandrawanshi Aged About 40 Years
3. Ku. Lata Chandrawanshi D/o Jalesh Chandrawanshi Aged About 15 Years

Appellant No.3 Minor, Through her natural guardian appellant No.1. All are resident of Ganganagar, Chingrajpara, PS Sarkanda, Civil and Revenue Distt. Bilaspur (CG)

---- Appellants

Versus

1. Chandraprakash Tandan S/o Rajjoram Tandan Aged About 21 Years R/o Kumhi, P.S. Pandatarai, Distt. Kabeerdham C.G., Chhattisgarh – driver of vehicle motorcycle No. CG 10 EJ 3346.
2. Bhanu Prakash Baghel, R/o Kumhi, P.S. Pandatarai, Distt. Kabeerdham C.G., District : Kawardha (Kabirdham), Chhattisgarh – owner of motorcycle No. CG 10 EJ 3346.
3. The Oriental Insu.Co.Ltd. Thru- The Divisional Manager, Near Bus Stand Bilaspur, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh (insurer of motorcycle No. CG 10 EJ 3346)

---- Respondents

For Appellants	:	Ms Neeta Choubey, Advocate on behalf of Mr. NP Chandravanshi, Advocate.
For Respondent No.1 & 2	:	None though served.
For Respondent No.3	:	Mr. TK Tiwari, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27/09/2018

This is claimants' appeal under Section 173 of Motor Vehicles Act against the award dated 18.9.2013 passed by 6th Additional Motor

Accident Claims Tribunal, Bilaspur (CG) in Claim Case No.45/2011.

02. As per averments in the claim petition, on the date of accident i.e. 9.2.2011 Rohit Chandravanshi, aged 21 years, earning Rs.250-300/- per day by selling food stuff (पानीपुरी चाट), was going on his motorcycle by riding the same with a moderate speed. However, at that time respondent No.1 came from opposite direction riding the offending vehicle motorcycle bearing No. CG 10 EJ 3346 in a rash and negligent manner and dashed the motorcycle of the deceased. As a result thereof, the deceased suffered grievous injuries and died during treatment in the hospital. At the time of accident, the vehicle in question was owned by respondent No.2 and insured with respondent No.3.

03. On claim petition being filed by the appellants/claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties by the impugned award granted total compensation of Rs.3,49,000/- with interest @ 7.5% per annum from the date of application till realization, fastening the liability on the insurance company, jointly and severally along with driver and owner of the offending vehicle.

04. Learned counsel for the appellants submits that the Tribunal has wrongly considered the income of the deceased as Rs.3000/- whereas even on notional basis, it should have been Rs.4500/-. Further, the Tribunal has not awarded any amount towards future prospect whereas in view of decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, considering the age of the deceased i.e. 21 years, 40% of his annual income ought to have been added thereto towards future prospect. Lastly, he submits that under the conventional heads also the amount awarded by the Tribunal needs to be enhanced suitably.

05. On the other hand, learned counsel appearing for respondent No.3/insurance company supporting the impugned award submits that the Tribunal considering the entire evidence on record has rightly passed the award which needs no interference by this Court.

06. Heard learned counsel for the parties and perused the material

available on record.

07. As regards the income of the deceased, though the claimants have pleaded that the deceased was earning Rs.250-300/- per day by selling food stuff, however, no oral or documentary evidence has been adduced in support thereof. Therefore, in these circumstances, taking into consideration the fact that the accident occurred in the year 2011, the minimum wages at the relevant time, monthly income of the deceased can safely be taken as Rs.4500/- i.e. Rs.54,000/- per annum. Further, considering the age of the deceased and keeping in view the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra), there should be 40% addition in the annual income towards future prospects. Thus, on the basis of decisions of the Hon'ble Supreme Court in **Sarla Verma & others Vs. Delhi Transport Corporation, (2009) 6 SCC 121**, **Pranay Sethi** (supra) and **Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018**, the amount of compensation is recalculated as under:

Sl. No.	Heads	Calculation
01.	Income of the deceased	Rs.54,000/- per annum
02.	40% of (i) above to be added towards future prospects	(54,000 + 21,600) = Rs.75,600/-
03.	50% deduction towards personal and living expenses of the deceased as he was unmarried	Rs.37,800/-
04.	Multiplier of 18 to be applied	Rs.37,800 x 18 = Rs.6,80,400/-
05.	Towards loss of estate and for funeral expenses	Rs.30,000/-
06.	Lumpsum towards filial consortium	Rs. 25,000/-
	Total compensation	Rs.7,35,400/-

08. In the result, the appeal is allowed in part. Since the Tribunal has already awarded Rs.3.49 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,86,400/- with interest @ 7.5% per annum from the date of application till realization. The impugned award stands modified to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge