

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 120 of 2015**

1. Smt. Sundermati Patel, age- 48 years, widow of late Kanhaie Patel, by caste- Aghariya,

R/o- Village- Aambahal, P.S.- Buden, Tahsil- Padampur & Civil Distt. And Distt. Bargarh (Orissa).

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

1. Rampal Umre, Age- 49 years, S/o Shri Chaitrma Umre, R/o- Badi, Aathaa- Meel Makan No. 103, P.S.- Badi, Nagpur Tahsil & Civil Distt. And Distt. Nagpur (M.H.)

(Driver of Truck No. M.H.-31/CB/3786)

2. Jitesh Sahu, aged 51 years, S/o Shri Bajrang Sahu, R/o- New Bharat Goods Garage, Nehru Putla, P.S.- Itwari- Nagpur, Tahsil & Civil Distt. And Distt.- Nagpur (M.H.)

(Owner of Truck No. M.H.-31/CB/3786)

3. The National Insurance Company Ltd., divisional- Office at Jail Road, Madina- Building, Raipur, Civil Distt. And Distt.- Raipur (C.G.).

---- Respondents

For Appellants	:	Shri Jameel Akhtar Lohani, Advocate.
For Respondent No.3	:	Shri G. V. K. Rao, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****07.12.2018**

Heard on IA No. 1, application for dispensation of service of notice to the respondent Nos. 1 and 2.

2. Having heard learned counsel for the parties, having regard to the facts & circumstances of the case in particular the fact that respondent Nos. 1 & 2/driver & owner of the offending vehicle remained *ex-parte* before the Tribunal, the liability has been fastened on respondent No. 3/Insurance Company and no counter appeal has been filed by the non-applicants, IA No. 01 is allowed, thereby dispensing with service of notice on respondent Nos. 1 & 2.

3. With the consent of both the parties the matter is heard finally.

4. This appeal is by the claimant/wife of the deceased -Kanhaie Patel against the award dated 20.11.2011, passed by Motor Accident Claims Tribunal, Mahasamund in Claim Case No.183/2009 awarding total compensation of Rs. 72,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant Nos. 2 & 3 jointly and severely.

5. As per claim petition, on 14.05.2009, at about 2.30pm deceased Kanhaie Patel, aged about 55 years, earning Rs.50,000/- per annum by work of agriculture and by jute work, was earning Rs. 6,000/- per month, died in the motor vehicle accident caused due to rash and negligent driving of vehicle bearing registration No. MH31-CB/3786 by non-applicant No.1-Ram Pal Umre. The vehicle is owned by non-applicant No. 2- Jitesh Sahu and insured with Non-applicant No. 3- The National Insurance Company Limited.

6. On claim petition being filed by the claimant/wife under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

7. Learned counsel for the appellant/claimant submits that income of the deceased has wrongly been considered by the Tribunal as Rs.15, 000/- per annum whereas it should have been Rs.3,000/-per month i.e. Rs. 36,000/- per annum as per minimum wages at the relevant time. He also submits that the amount awarded under the

conventional heads also being on the lower side deserves to be enhanced suitably.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121, National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

8. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

9. Heard learned counsel for the parties and perused the material available on record and the award impugned.

10. As regards income of the deceased, learned counsel for the claimant argued that the learned Tribunal has wrongly considered the income of the deceased as Rs. 15,000/- per annum, Therefore, looking to the facts & circumstances of the case and argument made by learned counsel for the appellant, the income of the deceased is considered as Rs.3,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 55 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi* (supra), the claimant is held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.3,000/- per month.	Rs. 3,000x12= Rs. 36,000/- per annum
02.	1/3rd deduction towards personal and living expenses of the deceased	Rs. 36,000- 12,000/- =Rs. 24,000/-
03.	Multiplier of 5 to be applied	Rs. 24,000x5= Rs. 1,20,000/-

04.	Towards loss of estate, loss of consortium and funeral expenses	70, 000/-
	Total compensation	Rs. 1,90,000/-

Since the Tribunal has already awarded Rs. 42,000/- after deducting the same from the above amount, the claimant is held entitled for additional compensation of Rs. 1,48,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

11. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya)

Judge