

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 792 of 2012**

1. Suresh Chandrakar And Ors. S/o Late Ramdhan Chandrakar Aged About 42 Years,
2. Triveni Bai Chandrakar W/o Suresh Chandrakar Aged About 40 Years
3. Ku. Premlata Chandrakar, D/o Suresh Chandrakar, aged about 21 years,

All R/o Village Khaira, District Mahasamund C.G.
 Present R/o Karmchari Grih Nirman Society, New Colony,
 Kushalpur, Near Royal Academy, Ward No.61, Kushalpur, Raipur,
 District Raipur C.G.

----Appellants**Versus**

1. Mohd. Ansar, S/o Mohd. Sarvar, aged about 41 Years, R/o Ward No. 4, Near Water Tank, Mahasamund, Tahsil And Dist. Mahasamund C.G.
2. Sankee Singh Gurudutta, S/o Jaswant Singh Gurudutta, aged about 32 Years, R/o-C/o Jeet Auto & Property Deal, Behind Minocha Petrol Pump, Telibandha, Raipur, District : Raipur, Chhattisgarh
3. The Branch Manager, The Oriental Insurance Co. Ltd., through Branch Manager, Branch Office Madina Building, Jail Road, Raipur C.G.

---- Respondents

For Appellants	Shri Shivendu Pandya, Advocate.
For Respondent No.3	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****26/09/2018**

1. By the instant appeal, the appellants/claimants are challenging the legality and validity of the award dated

01.10.2011 passed by the 5th Additional Motor Accident Claims Tribunal, Raipur, District – Raipur, C.G (in short “Claims Tribunal”) in Claim Case No.78/2011, whereby the learned Claims Tribunal awarded total compensation of Rs. 1,86,900/- and fastened the liability on respondent No. 3 – Insurance Company for satisfying the award of compensation.

2. Brief facts of the case, are that on 23.10.2009 deceased -Khoman Chandrakar, who was working as a Head Mechanic in Aduat Automobile (Maruti workshop) Mahasamund, met with an accident at about 7:30 PM. The deceased was going to Mahasamund for taking petrol from the petrol pump by his own vehicle motorcycle and when he reached near the Shilti Nala, then the driver of the vehicle bearing No. C.G.04/J/0656 drove the said vehicle rashly and negligently, and dashed the vehicle of deceased. The deceased received severe injuries and he was died on the spot. The claimants, who are parents and sister of deceased -Khoman Chandrakar, have filed claim application before the Tribunal claiming compensation to the tune of Rs. 34,90,000/- from the respondents under various heads.
3. Respondent No.3 – Insurance Company has admitted that the vehicle bearing No. CG.04/J/0656 was insured with the company on the date of accident. It has been pleaded by the respondent No.3 that the accident took place when the

deceased was traveling in his vehicle, which was being driven in a rash and negligent manner by the deceased as a result of which the accident occurred. A plea of contributory negligence on the part of the driver of other vehicle was also taken.

4. Learned Claims Tribunal after considering the pleadings, evidence and other material available on record, awarded Rs. 1,86,900/- as total compensation to the claimants.
5. Learned counsel appearing for the claimants submits that at the time of accident, income of the deceased was Rs.7000/- per month but the Tribunal has wrongly taken at as Rs.3000/-. He further submits that the Claims Tribunal has also erred in making 30% deductions towards contributory negligence of the deceased and applying multiplier of 14, considering the age of parents of the deceased and not applying the multiplier on the basis of age of the deceased. Lastly he submits that the learned Claims Tribunal erred in not awarding any amount towards the loss of future prospects on the ground that the deceased on the date of accident was a Private Employee and working as Head Mechanic in Aduat Automobile (Maruti Workshop), Mahasamund.
6. Per contra learned counsel appearing for the Insurance Company supported the award and stated that the learned Claims Tribunal has passed the impugned award after

considering all the facts and circumstances of this case and award passed by the Tribunal is just and proper.

7. I have heard the learned counsel for both the parties and perused the records.
8. Undisputedly, deceased – Khoman Chandrakar, was in the employment of the Aduat Automobile (Maruti Workshop) and on the date of accident he was aged about 26 years.
9. In the light facts and circumstances of the case, the age of the deceased is to be taken for applying the multiplier as provided in table as formulated in **Sarla Verma & Ors Versus Delhi Transport Corporation** reported in **2009 (6) SCC 121**. As the age of deceased on the date of accident was 26 years, the correct multiplier to be applied is 17 in place of 14 as applied by the Tribunal.
10. Learned Claims Tribunal has also erred in not considering the amount towards the future prospects of the deceased for which the claimants are also entitled in view of the decision rendered by Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680**.
11. Thus, from the facts and circumstances of the case and the documents adduced by the respective parties, the monthly income of the deceased can safely be taken as Rs.4,000/- i.e. 48,000/- per annum.
12. In view of the law laid down in Pranay Sethi (supra),

considering the age of the deceased 40% of his annual income is required to be added thereto towards future prospects which comes to Rs.19,200/-. Thus, the annual income of the deceased is calculated at Rs.67,200/-. Since the deceased was unmarried, after deducting 50% from the above annual income towards his personal and living expenses, the annual loss of dependency comes to Rs.33,600/-. Further, considering the age of the deceased i.e. 26 years, the applicable multiplier is 17. After applying this multiplier, the total loss of dependency comes to Rs.5,71,200/-. As regards the amount awarded under the conventional heads i.e. Rs. 50,000/-, the same appears to be just and proper and need no interference by this Court. As regards the contributory negligence, there is nothing on record which could suggest that the deceased was in any manner responsible for unfortunate accident and as such no deduction under this head is required to be made.

13. Thus, the claimants are held entitled for a total compensation of Rs.5,86,000/-. Since, the Tribunal has already awarded a sum of Rs.1,86,900/-, after deducting the same from the amount as calculated above, the claimants are held entitled for an additional compensation of Rs. 4,00,200/-. This additional amount shall carry interest at the rate of 9% per annum from the date of claim application till its realization.

14. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated hereinabove. Rest of the conditions of the award shall remain intact.

15. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh