

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 452 of 2014**

1. Mus. Rasmet Bai, aged about 40 years, w/o Bigan Singh Kanwar
2. Subaso, aged about 45 years W/o Late Bigan Singh Kanwar
3. Chandrawati, aged about 17 Years Minor, son of Late Bigan Singh Kanwar.
4. Fulmet Aged About 15 Years Minor, daughter of Late Bigan Singh Kanwar.
5. Sahdev, Aged About 13 Years Minor, son of Late Bigan Singh Kanwar.

Appellants No.3 to 5 are minors, through their natural guardian-mother Mus. Rasmet Bai.

All are resident of Rajkishore Nagar, Bilaspur, District Bilaspur C.G.

---- Appellants

Versus

1. Shafeek Khan (Wrongly Mentioned As Shareef Khan) Aged About 37 Years, S/o Raseed Khan, R/o Kumbhmaha, P.O. Katgodi, P.S. Sonhat, Distt. Korea C.G. (Driver of Vehicle No. Truck CG15 AC/8700)
2. Pradeep Kumar Shukla Aged About 46 Years S/o Suresh Shukla R/o Agrasen Ward, Kharsia Road, Ambikapur, Distt. Surguja C.G. (Owner of vehicle No. Truck CG15AC/8700)
3. Branch Manager, Bajaj Alliance General Insu. Co .Ltd., Pandri Raipur C.G., Thru- The Branch Manager, Bajaj Alliance General Insu.Co.Ltd., Bilaspur, Distt. Bilaspur C.G. (Insurer of Vehicle No. Truck CG15AC/8700)

---- Respondents

For Appellants
For Respondent

Ms Neeta Choubey, Advocate.
Shri Rohitashva Singh, Advocate on behalf of
Shri N.K. Thakur, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Order On Board

22/10/2018

1. This is claimants' appeal seeking enhancement of compensation awarded by the 6th Additional Motor Accident Claims Tribunal, Bilaspur, C.G. (for short 'the Tribunal') in claim case No. 65/11 vide award dated 14.03.2014.
2. As against the compensation of Rs.37,24,600/- claimed by both the widows & children of deceased – Bigan Singh Kanwar by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for his death in the motor accident, the Tribunal awarded a total sum of Rs.5,90,588/- as compensation along with interest @ 7.5% per annum from the date of application till its actual payment.
3. The Tribunal, on a close scrutiny of the evidence led, held: the accident had occurred due to rash and negligent driving of Truck bearing registration No. CG-15-AC-8700 by its driver – Shafeek Khan, respondent No.1 herein; Bigan Singh Kanwar died during treatment on account of injuries sustained by him in the said accident; respondent No.3/Bajaj Alliance General Insurance Company Limited liable for payment of compensation as it could not establish violation of policy conditions; assessed and awarded the aforesaid sum as compensation.
4. Learned counsel for the appellants submits that the amount awarded by the learned Tribunal is very much on the lower side and needs to be enhanced suitably.
5. On the other hand, learned counsel appearing for respondent

No.3 submits that the amount of compensation awarded by the Tribunal is just and proper compensation in the facts and circumstances of the case and needs no interference.

6. I have heard learned counsel for the parties and perused the award impugned including the record of the Tribunal.
7. So far as the income of the deceased is concerned, the deceased was working as Postman and his net income was Rs.5,612/-. The income of the deceased has been duly proved by AW-3 Ishwar Prasad Pradhan, Assistant Post Master (Accounts). As regards the age of the deceased, as per pleading in the claim petition, the evidence of wife of the deceased Mus. Rasmet Bai, AW-1, the deceased was 45 years of age. Further, in the inquest Ex.P-4 and postmortem of the deceased Ex.P-5 his age is mentioned as 50 years. In this view of the matter, the Tribunal was not justified in considering the deceased to be in the age group of 51 to 55 and applying the multiplier of 11. From the evidence available on record, age of the deceased can safely be taken in between 45 and 50 years, for which the applicable multiplier is 13. As regards, the deduction of $\frac{1}{4}$ towards personal and living expenses of the deceased, the Tribunal has not committed any illegality in this regard. However, in view of decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680**, the 30% of the annual income ought to have been added thereto towards future prospect of the deceased and likewise under the incidental heads, the claimants are also entitled for a sum of Rs.70,000/-. But the Tribunal has not granted any amount towards future prospect and the amount

towards future prospect and the amount awarded under the incidental heads is on the lower side. Therefore, keeping in view the decision of the Supreme Court in Pranay Sethi (supra), I propose to recompute the compensation as under:-

Head	Calculation
Income of the deceased	Rs.5612/-x12= Rs.67,344/- per annum.
30% towards future prospect	Rs.20,203/- Rs.67,344 + 20,203 = 87,547/-
¼ deduction towards personal and living expenses of the deceased as he was married.	Rs.21,886/-
Annual loss of dependency	Rs.87,547 – Rs.21,886 = Rs.65,661/-
Multiplier of 13 applied for assessing total loss of dependency	Rs.65,661 x 13 = 8,53,593/-
Towards Conventional Heads	Rs.70,000/-
Total	Rs. 9,23,593/-

8. For the reasons mentioned herein above, the appeal is allowed in part. The compensation of Rs.5,90,588/- as awarded by the Tribunal is enhanced to Rs.9,23,593/-. The appellants are further entitled to receive enhanced amount of compensation of Rs.3,33,005/-, over and above the amount awarded by the Tribunal. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of claim application till

its actual payment. The award is modified to the above extent.

Rest of the conditions of the award shall remain intact.

9. The respondent No.3/Bajaj Alliance General Insurance Company Limited is granted one month time to deposit the enhanced amount of compensation with interest before the concerned Claims Tribunal.

10. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh