

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 256 of 2014

1. Amarbati W/o Late Shivprasad Aged About 28 Years, Caste Gond
2. Minor Rajendra S/o Late Shivprasad Aged About 5 Years caste Gond.
3. Ravi S/o Late Shivprasad Aged About 3 Years caste Gond.
4. Ravishankar S/o Late Shivprasad Aged About 2 Years, Caste Gond.
5. Rajesh S/o Late Shivprasad Age- 2 Months,

Appellants No. 2 to 5 are minor, through legal guardian mother Amarbati wife of late Shivprasad Gond. All are resident of Village Rahidar Banger, Police Station Kukdur, Tahsil Pandaria, Distt. Kabirdham (CG)

6. Mahasingh S/o Vikram Singh Aged About 80 Years, Caste Gond, R/o Rahidar Banger, P.S. Kukdur, Tah. Pandaria, Distt. Kabirdham C.G.
7. Rambati W/o Mahasingh Aged About 75 Years, Caste Gond R/o Rahidar Banger, P.S. Kukdur, Tah. Pandaria, Distt. Kabirdham C.G.

---- Appellants

Claimants

Versus

1. Sudhari Singh Gond S/o Guhar @ Gohari Singh Gond Aged About 30 Years, occupation agriculture work and vehicle owner Tractor No. CG 09 C 6050 and Trolley No. CG 09 C 6051. R/o R/o Village Sari P.O.- Udiyakhurd, Tahsil And P.S.- Sahaspur Lohara, District- Kabirdham, Chhattisgarh.
2. The New India Insurance Company Ltd. Parakh Bhawan, Station Road Branch, Durg C.G.

---- Respondents

For Appellants	:	Shri Vipin Singh, Advocate.
For Respondent No.2	:	Shri Deepak Gupta, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

03/12/2018

The appellants/claimants by filing this appeal u/s 173 of the Motor Vehicles Act, 1988 are seeking enhancement of the amount of compensation awarded by Motor Accident Claims Tribunal, Kaboridham (Kawardha) in Claim Case No.57/2011 vide award dated 12.2.2014.

02. Claimant's case in brief is that on 28.5.2011 while the deceased Shivprasad was going in tractor bearing No. CG 09 C 6050 in connection with his work, on account of rash and negligent driving of the said vehicle by non-applicant No.1, the vehicle turned turtle. As a result thereof, Shivprasad suffered grievous injuries and died during treatment in hospital on 4.7.2011.

03. On claim petition being filed by the claimants u/s 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties, granted a total compensation of Rs.3.67 lacs with interest @ 7.5% p.a. from the date of application till realization, fastening liability on non-applicants No. 1 to 3, jointly and severely. Aggrieved by this award, the claimants have preferred appeal for enhancement. However, no counter appeal has been preferred by insurance company against the said award.

04. Learned counsel for the appellants/claimants submits that on the date of accident i.e. 28.5.2011, minimum wage was Rs.4500/- per month whereas the Tribunal has taken the earning of the deceased @ Rs.100/- per day, that too for 25 days in a month and assessed the per

month income of the deceased at Rs.2500/-. Further, the Tribunal has wrongly deducted 1/3rd towards personal and living expenses of the deceased and considering the number of dependents, it should have been 1/5th in the present case in view of decision in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 121***. He submits that the Tribunal also should have considered future prospects of the deceased in view of decision of the Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. The amount granted under the conventional heads also needs to be enhanced.

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award in relation to quantum part. However, he submits that the Tribunal was not justified in fastening liability on the insurance company as there was breach of policy condition since the deceased was travelling in the tractor.

06. Heard learned counsel for the parties and perused the material available on record.

07. As regards the contention of the respondent/insurance company that there was breach of policy, from perusal of the record including the pleadings and evidence adduced by the parties, it appears that the Tribunal was justified in fastening liability on the insurance company. Even otherwise, no counter appeal has been preferred by the insurance company challenging the liability.

08. So far as income of the deceased is concerned, though the claimants have pleaded that the deceased being labour was earning

Rs.200/- per day, but no evidence, oral or documentary could be adduced in support thereof. Therefore, in these circumstances, keeping in view the minimum wages at the relevant time, income of the deceased it taken as Rs.4500/- per month i.e. 54,000/- per annum. Further, the Tribunal was not justified in making 1/3rd deduction from the income of the deceased towards his personal and living expenses as the number of dependents in this case are seven and it should have been 1/5th in view of Sarla Verma (supra). Likewise, the Tribunal ought to have applied multiplier of 17 instead of 18 as the deceased was 26 years of age at the time of accident as has been held by the Tribunal itself. The Tribunal has also not granted any amount towards future prospects whereas in the present case, it should have been 40% as the deceased was in the category of self-employment and was below 40 years of age. Thus, keeping in view the aforesaid facts and the law laid down in Sarla Verma and Pranay Sethi (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation
01.	Income of the deceased @ Rs.4500/- per month.	Rs.4,500 x 12 = Rs.54,000/- per annum
02.	40% of (i) above to be added towards future prospects	(21,600 + 54,000/-) = Rs.75,600/-
03.	1/5th deduction towards personal and living expenses of the deceased	(75,600-15120) = Rs.60,480/-
04.	Multiplier of 17 to be applied	Rs.10,28,160/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
06.	For parental consortium @ Rs.15,000/- each for claimants No. 2 to 5 – minor	Rs.60,000/-

	children of deceased.	
	Total compensation	Rs.11,58,160/-

Since the Tribunal has already awarded Rs.3.67 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.7,91,160/- with interest @ 7.5% per annum from the date of application till realization.

09. In the result, the appeal is allowed in part with modification in the award impugned to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/
(Gautam Chourdiya)
Judge