

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 828 of 2014

1. Umakant Mishra S/o Late Murari Lal Mishra, aged about 45 years
 2. Smt. Lata Mishra W/o Umakant Lal Mishra, aged about 42 years
- Both are resident of Bazarpara, Post Sonarpal, P.S. Bhanpuri, District Bastar (C.G.)

---- Appellants/Claimants

Versus

1. Rupesh Kumar @ Billu Bajpai S/o Dinesh Bajpai, aged about 30 years,
R/o Hikamipara Dalpat Sagar Ward, Jagdalpur, District Bastar (C.G.)
(Owner-cum-Driver)
2. The Oriental Insurance Co. Ltd. Through Branch Manager, Main Road,
Jagdalpur, District Bastar (C.G.)
(Insurer)

---- Respondents

For Appellants/Claimants : Shri Pravin Dhurandhar, Advocate

For Respondents 1 : None

For Respondent No.2 : Shri Vikash Shrivastava, Advocate appears on
behalf of Shri Anumeh Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

13.12.2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants, seeking enhancement of the compensation awarded by the First Additional Motor Accident Claims Tribunal, at Bastar, Jagdalpur (C.G.) vide award dated 16.05.2014 passed in Claim Case No. 07 of 2013.
2. The claimants/Appellants, unfortunate mother and father of deceased- Vijay Kumar Mishra, who was unmarried aged about 22 years, claimed

compensation of Rs.11,40,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of their son in the motor accident.

3. The facts of the case are that on 28.12.2012, when the deceased after closing the Tehsil Office was going on his motorcycle bearing registration No. CG-17 KA/3329 towards Jagdalpur, Respondent No.1/owner-cum-driver of Jeep bearing registration No. CG-17 ZT/0132 driving the said vehicle in a rash and negligent manner dashed the vehicle of the deceased in Main Road. As a result thereof, the deceased sustained injuries and died on the spot itself.

4. The learned Tribunal, in the impugned award, has considered the evidence available on record and has awarded a compensation of Rs.4,83,808/- in favour of the Appellants-Claimants, parents of the deceased, with interest @ 6% per annum from the date of application till realization. The Tribunal has also directed that the Respondent No.2 is liable for payment of compensation to the Claimants.

5. Learned counsel for the Appellants/Claimants submits that the deceased was a contingency employee in Tehsil Office, Lohandiguda working as peon and was earning Rs.6,000/- per month, but the Tribunal assessed the income of the deceased as Rs. 4,277/- per month. He also submits that the amount of Rs.5,000/- each to the parents towards loss of estate and Rs.2,000/- towards funeral expenses awarded by the Tribunal is on lower side, in view decision of the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**. He further submits that the Tribunal has not awarded any amount towards future prospect and therefore, this may also be granted in this appeal. Lastly,

learned counsel for the Appellants/Claimants places reliance on the decision in the matter of **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram & Ors. in Civil Appeal No. 9581 of 2018 arising out of SLP(Civil) No. 3192 of 2018 dated 19.09.2018** and prays for grant of filial consortium to the parents of the deceased, apart from awarding towards other conventional heads.

6. Learned counsel for the Insurance Company/Respondent No.2, however, opposes the appeal and submits that the learned Tribunal has rightly awarded the amount of compensation, therefore, it is just and reasonable, which does not call for any interference in the instant claim petition.

7. I have heard the learned counsel appearing for the Claimants as also the counsel appearing for Insurance Company and perused the impugned award including the records of the Claims Tribunal.

8. So far as monthly income of the deceased is concerned, as per Ex.-A1, Ex.-A2(C) and Ex.-A3(C), it reveals that the deceased was contingency paid employee and was getting salary at Rs.4,277/- per month. Therefore, it was proved that the deceased was getting above salary per month and the Tribunal has rightly assessed the monthly income of the deceased and the argument advanced in this regard fails.

9. It was also argued that the award of Rs.5,000/- each to the parents (in total 10,000/-) for loss of estate and Rs.2,000/- for funeral expenses was on the lower side. In view of the decision in matter of *Pranay Sethi* (supra) wherein the Hon'ble Apex Court awarded Rs.15,000/- for loss of estate and Rs. 15,000/- for funeral expenses, I am of the opinion that the Tribunal has

erred in awarding the amount on the above heads.

10. So far as non-grant of any amount towards future prospect is concerned, in view of the decision in *Pranay Sethi* (supra), considering the age of the deceased and nature of his job, there should be 40% addition to the annual income of the deceased towards future prospect.

11. In view of the decision of the Supreme Court in the matter of *Magma* (supra), this Court is of the opinion that the parents of the deceased are also entitled for filial consortium @ Rs.40,000/- each (in total Rs.80,000/-).

12. Thus, the Claimants are entitled for compensation in the following manner:-

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.4,277/- per month i.e. Rs.51,324 per annum
2	40% towards future prospects added to annual income	(Rs.51,324/- + Rs.20,530/-) Rs.71,854/- per annum
3	½ deduction towards personal expenses of the deceased	Rs.35,927/-
4	Multiplier of 18 applied	Rs.35,927/- x 18= Rs.6,46,686/-
5	Loss of estate	Rs.15,000/-
6	Funeral expenses	Rs.15,000/-
7	Filial consortium to the parents each	(Rs.40,000/- + Rs.40,000/-) Rs.80,000/-
	Total	Rs.7,56,686/-

Since the Tribunal has already awarded Rs.4,83,808/-, after deducting

the same from the above amount, the Claimants are held entitled for additional compensation of Rs.2,72,878/-.

13. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimants/Appellants shall be entitled to a total enhanced amount of compensation of Rs.2,72,878/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment. However, rest of the conditions of the impugned award shall remain intact.

14. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge