

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 847 of 2014

1. Uma Devi Kurre, aged about 32 years, W/o Late Shyam Sunder @ Sundaru Kurre (Husband)
2. Som Dutt Kurre, aged about 15 years, S/o Late Shyam Sunder (Father)
3. Sawan Kumar, aged about 13 years, S/o Late Shyam Sunder (Father)
4. Kumari Varsha, aged about 11 years, D/o Late Shyam Sunder (Father)
5. Kanwal Kurre, aged about 58 years, S/o Late Dev Singh (Son)
6. Samund Bai, aged about 52 years W/o Kanwal

Note:- Appellants No. 2, 3, 4, Minor through his natural guardian Mother Uma Devi Kurre

All R/o Village- Dingora, Thana- Pathariya, District – Mungeli (C.G.)

---- Appellants/Claimants

Versus

1. Indra Pal Singh Maravi S/o Khemram Singh, R/o Village- Dipshi Para Bhunera Thana- Pali, District Korba (C.G.)
Driver of the offending Vehicle Truck No. C.G.11/A.B./1888
2. Dharendra Kumar S/o Gokul Prasad R/o Village-Pali, Tahsil Janjgir, District Janjgir Champa (C.G.)
Owner of the offending Vehicle Truck No. C.G.11/A.B./1888
3. Branch Manager, Barti Aksha Insurance Company Limited, First Floor Chawala Complex Devendra Nagar Road, Sai Nagar Raipur, District- Raipur (C.G.)
Insurer of the offending Vehicle Truck No. C.G.11/A.B./1888

---- Respondents

For Appellants : Shri A.L. Singroul, Advocate

For Respondent No.3 : Shri Ghanshyam Patel, Advocate

For Respondents 1 & 2 : None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

23.10.2018

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 Third Additional Member to the Court of First Upper Motor Accident Claims Tribunal, Bilaspur (C.G.) vide award dated 25.03.2014 passed in Claim Case No. 61 of 2013.

2. The claimants/Appellants, unfortunate wife, sons, daughter, mother and father of the deceased, claimed compensation of Rs.17,30,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the death of deceased- Shyam Sunder @ Sundaru Kurre in the motor accident.

3. The facts of the case are that on 12.08.2013, when the deceased was coming towards Bilaspur from his vehicle Tata-Magic Pickup bearing registration No. CG 10 – T - 4042, in the night at about 3.00 AM Respondent No.1/driver of the offending vehicle Truck bearing registration No. CG 11 A.B.1888 driving the said vehicle in a rash and negligent manner dashed the vehicle of deceased. The deceased sustained grievous injuries. As a result thereof, the deceased died on the spot itself.

4. The learned Tribunal, in the impugned award, has considered the income of the deceased as Rs 3,000/- per month and has awarded a compensation of Rs.4,80,800/- in favour of the Appellants-Claimants with interest @ 6% per annum from the date of application till realization. The Tribunal has also directed that the Respondents are liable for payment of compensation to the Claimants.

5. Contention of the learned counsel for the Appellants/Claimants is that the income of the deceased has been considered by the Tribunal at Rs.3,000/- per month. He contended that the deceased was a driver and therefore his monthly income ought to have been considered as per minimum wages prevalent at that time i.e. Rs.4,000/-. He submits that the Tribunal has not awarded any amount towards future prospect, this may also be granted in this appeal. He further submits that this apart the Tribunal has only awarded the amount under conventional heads as Rs.20,000/- whereas as in view of the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Ors., (2017) 16 SCC 680***, Rs.70,000/- ought to have been awarded under this head.

6. Learned counsel for the Respondent No.3/Insurance Company however opposes the appeal and submits that no specific evidence was adduced that on the date of accident, the deceased was having income, no income certificate was produced and the Tribunal has rightly assessed the income of deceased at Rs.3,000/- per month, 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 parties and perused the impugned order including the records of the Claims Tribunal.

8. Considering the age of the deceased i.e. 32 years and evidence adduced by Appellants/Claimants shows that the deceased was a driver, the minimum wages of the skilled labour is Rs.4,000/- per month at the relevant time whereas the income considered by the learned Tribunal is Rs.3,000/- per month which appears to be on lower side and as such, in view of the decision of the Apex Court in **National Insurance Company Limited** vs. **Pranay Setthi, (2017) 16 SCC 680**, the claimants are entitled for compensation in the following manner :

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.4,000/- per month i.e. Rs.48,000/- per annum
2	40% towards future prospects added to annual income	(Rs.48,000/- + Rs.19,200/-) Rs.67,200/- per annum
3	1/5th deduction towards personal expenses of Deceased	(Rs.67,200/- – Rs.13,440/-) Rs.53,760/-
4	Multiplier of 16 applied	Rs.53,760/- x 16 = Rs.8,60,160/-
5	For conventional heads (loss of estate, loss of consortium and for funeral expenses	Rs.70,000/-
	Total	Rs.9,30,160/-

Since the Tribunal has already awarded Rs.4,80,800/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.4,49,360/-.

9. 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.4,49,360/- 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.

10. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge