

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 601 of 2015

1. Fuleshwari W/o Late Shri Tiharu Sahu Aged About 37 Years
2. Ku. Budhiyarin D/o Late Shri Tiharu Sahu Aged About 18 Years
3. Omprakash S/o Late Shri Tiharu Sahu Aged About 15 Years
4. Mohan S/o Late Shri Tiharu Sahu Aged About 12 Years

Appellants No. 3 to 4 are minor Through appellant No.1

All R/o Sankra, P.S. - Berla, Tahsil- Berla, District- Bemetara, Chhattisgarh,

---- Appellants

Claimants

Versus

1. Gangadhar Sahu S/o Shri Mangturam Sahu Aged About 43 Years R/o Sankra, P.S. - Berla, Tahsil- Berla, District Bemetara, Chhattisgarh. - driver.
2. Chetan Kumar S/o Shri Gangadhar Sahu Aged About 21 Years R/o Sankra, P.S. - Berla, Tahsil- Berla, District- Bemetara, Chhattisgarh. - owner.
3. Royal Sundaram Alliance Insurance Company Limited, Through Branch Manager, Rama Trade Centre 1st Floor, In Fron Of Rajiv Plaza, Near Bus Stand Bilaspur, District- Bilaspur, Chhattisgarh – insurer.

---- Respondents

For Appellants	:	Shri Vedant Bhelonde, Advocate on behalf of Shri PR Patankar, Advocate.
For Respondent No.3	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

05/12/2018

This appeal is by the claimants against the award 24.1.2015

passed by Motor Accident Claims Tribunal, Bemetara in Claim Case No.09/2013 awarding total compensation of Rs.4,02,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company of satisfying the award.

02. As per claim petition, on 10.5.2012 at around 3.25 pm while deceased Tiharu Sahu was travelling in tractor bearing No.CG 07 NA 1963 and trolley bearing No. CG 04 D 0955 as a labour for unloading sand, due to rash and negligent driving the said vehicle by non-applicant No.1 Gangadhar Sahu, the vehicle turned turtle as a result of which Tiharu Sahu suffered grievous injuries and ultimately died in hospital during treatment on 20.5.2012.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that the Tribunal has wrongly considered income of the deceased as Rs.3000/- per month whereas even as per minimum wages, it comes to Rs.4500/-. The Tribunal has also wrongly deducted 1/3rd towards personal and living whereas as per decision of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, it should have been 1/4th as the number of dependents in this is four. Further, no amount towards future prospect has been given and in view of decision in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, there should be 25% addition in the annual income of the deceased under this head and likewise, under the conventional heads also the Tribunal has awarded on the lower side which needs to be enhanced to Rs.70,000/- as per *Pranay Sethi* decision. Lastly, he submits that parental consortium has also not been considered by the Tribunal whereas considering the fact that claimants No. 2 is unmarried daughter and No.3 & 4 are two minor children, they are entitled for compensation under the head of parental consortium.

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

07. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.5000/- per month as a labour and Rs.30,000/- from agriculture but no documentary or oral evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4500/- per month as per minimum wages at the relevant time. Hence, keeping in view the decision in *Sarla Verma, Pranay Sethi* (supra) and ***Magma General Insurance Co. Ltd. Vs. Nanuram and others in Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192/2018***, the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.4,500/- per month.	54,000/- per annum
02.	25% of (i) above to be added towards future prospects	54,000 + 13500 = 67,500/-
03.	1/4th deduction towards personal and living expenses of the deceased	67,500 – 16,875 = 50,625/-
04.	Multiplier of 15 to be applied	7,59,375/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
06.	Towards parental consortium @ Rs.5,000/- each to claimants No. 2 to 4.	Rs.15,000/-
	Total compensation	Rs.8,44,375/-

Since the Tribunal has already awarded Rs.4,02,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,42,375/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

08. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/

(Gautam Chourdiya)

Judge