

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 974 of 2014**

1. Sudesh Singh S/o Kedarnath Singh, aged about 50 years.
2. Smt. Anita Singh W/o Sudesh Singh, aged about 48 years.
3. Monika Singh D/o Sudesh Singh, aged about 22 years.

All R/o Chikhlakasa, Police Station Dallirajhara, District - Balod (C.G.)

---- Appellants**Versus**

1. Hemant Kumar S/o Dharmaram, aged about 23 years, R/o village Mullamirchipara, Police Station Bhanupratappur, District Kanker (C.G.)

(Driver of vehicle No. C.G.04-J-6713)

2. Gurlal Singh S/o Trilok Singh, R/o T.P. Nagar, Tatibandh Raipur, District Raipur (C.G.)

(Owner of vehicle No. C.G.-04-J-6713)

3. The Oriental Insurance Company Limited, Divisional Manager, Division Office, Dr. Rajendra Building, Durg, District Durg (C.G.)

(Insurer of vehicle No. CG-04-J-6713)

---- Respondents

For Appellants	:	Shri Shikhar Bhakhtiyar, Advocate.
For Respondents 1 & 2	:	None.
For Respondent No.3	:	Shri Ratan Pusty, Advocate

Hon'ble Smt Justice Rajani Dubey**Order On Board****13/12/2018**

1. This appeal arises out of the award dated 09.05.2014 passed by I Additional Motor Accident Claims Tribunal (for

short the “Tribunal”) Balod, District Balod in Claim Case No.58/2014 awarding a compensation of Rs.2,98,000/- in favour of the appellants/claimants for the death of Akshay Kumar.

2. Facts of the case in brief are that on 10.06.2012, Akshay Kumar along with Juganu Ram was going to Balod from Dallirajhara in Maruti Omni bearing registration No.CG-07-M-5062. At about 9.00 AM when they reached near village Suvarbod, a truck bearing registration No.CG-04-J-6713 driven by respondent No.1 herein in a rash and negligent manner came from wrong side and dashed their Maruti Omni, as a result of which Akshay Kumar sustained grievous injuries in his head and other parts of body and succumbed to those injuries on the spot. A claim petition was filed by the appellants/claimants who happen to be the legal heirs (Mother, Father and Sister) of the deceased claiming a compensation of Rs.20,50,000/- *inter alia* pleading that the deceased at the relevant time was aged about 21 years, he was working in the office of Alok Mathur Contractor and Transporter as Technician and Operator and earning Rs.15,000/- per month.

3. Pleading of the claimants have, however, been denied by the respondent/insurance company.

4. After evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs.2,98,000/- along

with interest @ 6% per annum in favour of the appellants/claimants taking the monthly income of the deceased as Rs.3,000/- per month and Rs.36,000/- per annum, applying the multiplier of 16 and deducting Rs.18,000/- towards his personal expenses. Hence, this appeal for enhancement.

5. Counsel for the appellants/claimants submits that the Tribunal has erred in law in not awarding adequate compensation to the claimants. He also submits that the annual income of the deceased at Rs.36,000/- has not been properly assessed by the Tribunal. Learned counsel for the appellants further argued that looking to the number of dependents, the deduction of 50% of the income of the deceased is not legal in view of the decision of the Apex Court in the case of **Sarla Verma & Ors V. Delhi Transport Corporation & Anr.**¹ Learned counsel for the appellants also argued that the claims Tribunal has also failed in not taking future prospect as per the ratio laid down in the case of **Santosh Devi v. National Insurance Co. Ltd**². It has been also submitted that the amount awarded under the conventional heads is also on the lower side and deserves to be enhanced suitably.

6. On the other hand, counsel for the respondent/insurance company supports the award impugned.

1 (2009) 6 SCC 121

2 2012 (6) SCC 421

7. Heard counsel for the parties and perused the documents on record.

8. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

9. Now this Court shall examine as to whether the compensation of Rs.2,98,000/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

10. True, the claimants/appellants pleaded that deceased used to earn Rs.15,000/- per month by working as Technician and Operator in Alok Mathur Contractor and Transporter, no cogent and reliable evidence was led before the Tribunal to establish the income of the deceased to the extent of Rs.15,000/- per month. Even employer of the organization has not been examined in this regard. Therefore, this Court do not find any fault in the approach of the Tribunal in discarding the appellants' evidence about the income of the deceased. Nevertheless, the income of the deceased assessed by the Tribunal at Rs.3,000/- per month and Rs.36,000/- per annum in the year 2012 is certainly on the lower side considering the fact that deceased was an operator in a private firm and requires reconsideration.

11. Considering that deceased Akshay Kumar, on the date of accident, was aged about 20 years and at the time of incident he was operator in private firm, this Court is of the opinion that he could have easily getting salary of Rs.4,000/- per month in the year 2012 as Operator. This Court, therefore, propose to recompute the compensation taking the monthly income of the deceased at Rs.4,000/- per month and Rs.48,000/- per annum. The deceased was unmarried boy and 20 years of old at the time of accident. Hence, future prospect at 40% of the actual income of the deceased is required to be taken, thus, the amount comes to Rs.19,200/- (40% of Rs.48,000/-). Further, there being three claimants, the deduction of 1/3rd towards personal expenses of the deceased from his annual income would be just and proper. Accordingly, by deducting 1/3rd from the annual income of the deceased, the claimants' dependency is assessed at Rs.44,800/- per annum.

12. Looking to the age of the deceased and three claimants/appellants, at the time of accident, this Court of the opinion that the Tribunal has not rightly applied the multiplier in this case. In fact, for the age group of 15-20 years, multiplier of 18 has to be applied and not 16 as per the Schedule. Therefore, the multiplier is taken as 18 and compensation is assessed to Rs.44,800/- x 18 = Rs.8,06,400/-. That apart, the Tribunal has awarded Rs.5,000/- and Rs.5,000/-

under the head loss of estate and funeral expenses respectively, which in the facts and circumstances of the present case and in view of the judgment of Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi³**, is inadequate. The Supreme Court in the matter of **National Insurance (Supra)** dealt with the various heads under which compensation is to be awarded in a death case. Thus, keeping in view all these things, above discussion and in view of decisions of Hon'ble Supreme Court in the matter of **Santosh** and **National Insurance (supra)**, this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The claimants/appellants are entitled for compensation in the following manner:-

Head	Compensation awarded
Income	Rs.4,000/-
Future Prospect	Rs.1,600/- (i.e. 40% of the income)
Deduction towards living and personal expenses	Rs.,1867/- (i.e. 1/3rd of Rs.4,000/- + Rs.1,600/-)
Total Income	Rs.3,733/- (Rs.5,600 - Rs.1,867)
Yearly Income	Rs.44,796/- (Rs.3733/- x 12)
Multiplier applied	18
Loss of future income	Rs.8,06,328/- (Rs.3,733/- x 12 x 18)
Loss of Estate, Loss of Consortium and Funeral Expenses	Rs.70,000/-
Total compensation awarded	Rs.8,76,328/-

13. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.8,76,328/-

3 (2017) 16 SCC 680

(8,06,328/- + 70,000/-) rounded off Rs. 8,76,400/- for which the claimants are entitled to receive as compensation for the death of deceased Akshay Kumar. Since the Tribunal has already awarded Rs.2,98,000/-, after deducting the same the claimants/appellants are entitled for enhanced amount of Rs.5,78,400/-. This additional amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till realization. The amount received by the claimants, if any, shall be adjusted in the enhanced sum.

14. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/-
(Rajani Dubey)
Judge