

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 813 of 2017**

1. Smt. Chandrakali W/o Late Deepak Sahu, Aged About 32 Years
2. Jai Prakash S/o Late Deepak Sahu Aged About 13 Years
3. Anil Sahu, S/o Late Deepak Sahu Aged About 10 Years
4. Aabhash Sahu, S/o Late Deepak Sahu Aged About 8 Years
5. Smt. Purain Bai, W/o Late Ram Sahay Sahu, Aged About 75 Years

Appellant Nos. 2, 3 & 4 are minor through their legal guardian Mother Smt. Chandrakali (Applicant No.1). W/o Late Deepak Sahu Caste- Sahu aged about 32 years. All are R/o Village- Butena, Police Station Hirri, Tahsil-Takhatpur, District Bilaspur, Chhattisgarh.

----Appellants**Versus**

1. Manoj Kumar Pathare S/o Bhaiyyaram Pathare Aged About 31 Years R/o Rail Dabri Utarda, P. S. Kusmunda, Korba, Chhattisgarh. Driver Of The Offending Vehicle Trailer No C. G. 12/S/2128.
2. Smt. Asima Sharma, W/o Ashwani Sharma, Aged About 46 Years R/o L.I.G. 86, Sharda Vihar Colony Korba, District Korba, Chhattisgarh. Owner Of The Offending Vehicle Trailer No. C. G. 12/S/2128.
3. Branch Manager, The New India Insurance Company Limited, Through Branch Office In Front Of Rajeev Plaza Rama Tred Centre, Bilaspur, District Bilaspur, Chhattisgarh. Insure Of The Offending Vehicle Trailer No. CG. 12/S/2128.

---- Respondents

For Appellants	Shri A.L. Singroul, Advocate.
For Respondent No.3	Shri Anil Gulati, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****14/12/2018**

1. This is claimants' appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Bilaspur, C.G. (for short 'the Tribunal') in claim case No.294 of 2016 vide award dated

07.03.2017.

2. As against compensation of Rs.27,50,000/- claimed by the unfortunate widow, children and parents of the deceased – Deepak Sahu by filing claim application under Section 166 of the Motor Vehicles Act, 1988 (henceforth 'the Act') for his death in the motor accident on 27.03.2016, the Tribunal awarded a total sum of Rs.8,46,000/- along with interest at the rate of 9% per annum from the date of claim application till its actual payment.
3. The Tribunal, on close scrutiny of the evidence led by the parties held that on 27.03.2016 at about 9:45 pm accident had occurred due to rash and negligent driving of Trailer bearing registration No.CG-12S-2128 by its driver – Manoj Kumar Pathare, i.e., respondent No.1, owned by respondent No.2 and insured by respondent No.3. Deceased- Deepak Sahu, aged about 36 years, working as a Mason, died on account of injuries sustained by him in the said accident; respondent No.3 / Insurance Company Limited liable for payment of compensation as it could not establish violation of policy conditions; assessed and awarded the aforesaid sum as compensation.
4. Learned counsel appearing for the appellants submits that the Tribunal has wrongly deducted 1/3 towards personal and living expenses of deceased whereas it should have been 1/4. He further submits that Tribunal has also not awarded any amount towards future prospect & conventional heads. The impugned award, therefore, liable to be enhanced on the aforesaid grounds.
5. On the other hand, learned counsel appearing for respondent No.3 submits that the amount of compensation awarded by the Tribunal is just and proper compensation in the facts and circumstances of the

case and needs no interference.

6. I have heard learned counsel for the parties and perused the award impugned including the record of the Tribunal.
7. So far as the income of the deceased is concerned, the claimants have pleaded that the deceased was working as a Mason and thereby earning Rs.500/- per day. But learned Tribunal considered the income of the deceased at Rs.200/- per day i.e. 6,000/- per month, which is just and proper. As the deceased was 36 years of age, but the Tribunal has wrongly applied the multiplier of 17 in place of 15. The Tribunal has also fallen into error in deducting 1/3 towards personal and living expenses of the deceased whereas in view of judgment of Hon'ble Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121**, as there are 5 dependents, the deduction should have been 1/4. Further, the Tribunal has not awarded any amount towards future prospect whereas considering the age of the deceased and his nature of job 40% of his annual income ought to have been added thereto towards future prospect in the light of the Hon'ble Supreme Court in **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680**. Thus, in view of the aforesaid decisions, the claimants are held entitled for compensation in the following manner:-

Head	Calculation
Income of the deceased	Rs.6,000/-x12= Rs72,000/- per annum.
40% towards future prospect	Rs.28,800/- Rs.72,000 + Rs.28,800/- = Rs.1,00,800/-
1/4 deduction towards personal and living expenses of the	Rs.25,200/-

deceased	
Annual loss of dependency	Rs.1,00,800/- – Rs.25,200/- = Rs.75,600/-
Multiplier of 15 applied for assessing total loss of dependency	Rs.75,600 x 15 = 11,34,000/-
Towards Conventional Heads (Loss of Consortium, Loss of Estate & Loss of Funeral)	Rs.70,000/-
Total	Rs. 12,04,000/-

8. For the reasons mentioned herein above, the appeal is allowed in part. The compensation of Rs.8,46,000/- as awarded by the Tribunal is enhanced to Rs.12,04,000/-. The appellants are further entitled to receive enhanced amount of compensation of Rs.3,58,000/-, over and above the amount awarded by the Tribunal. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of claim application till its actual payment. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

9. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh