

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 214 of 2015**

- Smt. Kaushilya Bai Wd/o Late Shri Bhagat Ram Sahu, aged about 47 years, R/o village Kumhali, Police Station Ranchirai, District - Balod (C.G.)

---- Appellant**Versus**

1. Shailendra Chandrakar S/o Shri B.R. Chandrakar, aged about 22 years, R/o Sanjay Nagar, Kurud, police Station and Tahsil Kurud, District - Dhamtari (C.G.)

(Owner and driver of alleged motorcycle bearing registration no. CG-05-S-3377)

2. Iffco Tokiyo General Insurance Company limited, 2nd Floor, Shop No.205, M.M. Silver Plaza, Opposite Udyog Bhawan, near Maning Office, Ring Road No.1, Raipur, District Raipur (C.G.)

(Insurer of alleged motorcycle bearing registration no.CG-05-S-3377)

---- Respondents

For Appellant	:	Shri P.K. Tulsyan, Advocate under the authority of Shri Samir Singh, Advocate.
For Respondents 1	:	None.
For Respondent No.2	:	Shri Amrito Das, Advocate

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

1. This appeal arises out of the award dated 01.01.2015 passed by Additional Motor Accident Claims Tribunal (for short the "Tribunal"), Dhamtari (C.G.), in Claim Case No.09/2014 awarding a compensation of Rs.2,31,000/- in favour of the

appellant/claimant for the death of Bhagat Ram Sahu.

2. Facts of the case in brief are that on 19.12.2013 at about 03.00 PM, Bhagat Ram Sahu along with his friends had come to Dhamtari on account of personal work. After completing his work, he went to his relatives' hotel situated near Power House Bathela where after having a cup of tea he was going safely towards his side for *Pan Gutkha*. At the same time, one motorcycle bearing registration No. CG-05-S-3377 driven by respondent No.1 herein, in a rash and negligent manner, came from opposite side and dashed Bhagat Ram Sahu as a result of which he sustained grievous injuries. Bhagat Ram Sahu was immediately taken to Govt. Hospital, Dhamtari where he died during the course of treatment. A claim petition was filed by the appellant/claimant (wife) who happen to be the legal heir of the deceased claiming a compensation of Rs.6,00,000/- *inter alia* pleading that the deceased at the relevant time was aged about 55 years, he was skilled labour and working as carpenter and earning Rs.1,000/- per day.

3. Pleading of the claimant 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.2,31,000/- along with interest @ 6% per annum in favour of the appellant/claimant taking the monthly income of the deceased as Rs.3,000/- per month and Rs.36,000/- per annum, applying

the multiplier of 9 and deducting 1/3rd towards his personal expenses. Hence, this appeal for enhancement.

5. Counsel for the appellant/claimant submits that the Tribunal has erred in law in not awarding adequate compensation to the claimant. He also submits that the age of the deceased has wrongly been assessed by the Tribunal and according to the claim petition, he was aged 55 year. He further submits that the yearly income has been considered by the Tribunal as Rs.36,000/- whereas it ought to have been considered Rs.72,000/- per annum. Learned counsel for the appellant further 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. Ltd¹**. 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.

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

¹ 2012 (6) SCC 421

amount of compensation, nor a Bonanza.

9. Now this Court shall examine as to whether the compensation of Rs.2,31,000/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

10. True, the claimant/appellant pleaded that deceased used to earn Rs.1,000/- per day and Rs.30,000/- per month by working as carpenter, no cogent and reliable evidence was led before the Tribunal to establish the income of the deceased to the extent of Rs.30,000/- per month. Therefore, this Court do not find any fault in the approach of the Tribunal in discarding the appellant's 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 2013 is certainly on the lower side and requires reconsideration. That apart, considering the evidence available on record, this Court is of the view that the age of the deceased as 60 year has rightly been assessed by the Tribunal and accordingly this Court proceed to decide the claim.

11. Considering that deceased Bhagat Ram Sahu, on the date of accident, was aged about 60 year and at the time of incident he was skilled labour, this Court is of the opinion that he could have easily earned Rs.6,000/- per month in the year 2013 by doing carpenter work. This court, therefore, propose

to recompute the compensation taking the monthly income of the deceased at Rs.6,000/- per month and Rs.72,000/- per annum. The deceased was married and 60 years of old at the time of accident. Hence, future prospect at 10% of the actual income of the deceased is required to be taken, thus, the amount comes to Rs.7,200/- (10% of Rs.72,000/-). Further, there being one claimant, 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 claimant's dependency is assessed at Rs.52,800/- per annum (79,200 - 26,400).

12. Looking to the age of the deceased and one claimant/appellant, at the time of accident, this Court of the opinion that the Tribunal has rightly applied the multiplier of 9 in this case. Therefore, the compensation is assessed to Rs.52,800/- x 9 = Rs.4,75,200/-. That apart, the Tribunal has awarded Rs.5,000/-, Rs.5,000/- and Rs.5,000/- under the heads funeral expenses, loss of consortium & loss of estate 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 Sethi**², 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

² (2017) 16 SCC 680

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 claimant/appellant are entitled for compensation in the following manner:-

Head	Compensation awarded
Income	Rs.6,000/-
Future Prospect	Rs.600/- (i.e. 10% of the income)
Deduction towards living and personal expenses	Rs.2,200/- (i.e. 1/3rd of Rs.6,000/- + Rs.600/-)
Total Income	Rs.4,400/- (Rs.6,600 - Rs.2,200)
Yearly Income	Rs.52,800/- (Rs.4,400/- x 12)
Multiplier applied	9
Loss of future income	Rs.4,75,200/- (Rs.4,400/- x 12 x 9)
Loss of Estate, Loss of Consortium and Funeral Expenses	Rs.70,000/-
Total compensation awarded	Rs.5,45,200/-

13. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.5,45,200/- (4,75,000/- + 70,000/-) for which the claimant is entitled to receive as compensation for the death of deceased Bhagat Ram Sahu. Since the Tribunal has already awarded Rs.2,31,000/-, after deducting the same the claimants/appellants are entitled for enhanced amount of Rs.3,14,200/-. 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

claimant, 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

vijay