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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 238 of 2014**

1. Smt. Jamuna Bai, Widow of late Rambharos Sri, aged about 40 years, Caste- Gond,
2. Minor Kumari Sunita, D/o late Rambharos sori, aged about 14 years, Caste- Gond,
3. Minor Kumari Minakshi, D/o late Rambharos Sori, aged about 10 years, Caste- Gond,
4. Minor Kumari Khileshwari, /o late Rambharos Sori, aged about 10 years, Caste- Gond,

Appellant No. 2 to 4 are minor, through- natural guardian mother- Jamuna Bai, Wd/o late Rambharos Sori,

All R/o Village Gaardih, Police Sation Bilaigarh, Civil and Revenue District- Balodabazar- Bhatapara(C.G.).

---- Appellants**Versus**

1. Balgopal Das, S/o Mitra Bhanudas Vaishnav, aged about 57 years, Resident, Police Station- Padampur, Jagannapara, Civil and revenue District- Bargadh (Orissa)

(Driver of offending Vehicle Truck No. OR/15?L/8621)

2. Kushal Prasad Khanduja, S/o &Y. K. Khanduja, aged about 23 years, R/o Khetrajpur, Police Station Sambalpur, Civil and Revenue District- Sambalpur (Orissa).

(Owner of offending Vehicle Truck No. OR/15/L/8621)

3. The Oriental Insurance Company Ltd., Office- A 25/27, Aasaf Ali Road, New Delhi- 110002

Branch Office at Bargadh kenal Avenue Bargadh, Civil and Revenue Distirct Bargarh, Orissa 766028

(Insurer of Offending vehicle Truck No. OR/15/L/8621).

---- Respondents

For Appellant	: Shri Malay Bhaduri, Advocate
For Respondent No. 3	: Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

13.11.2018

This is claimants' appeal seeking enhancement of compensation awarded by Second Additional Motor Accident Claims Tribunal, Baloda Bazar (for short 'the Tribunal') in claim case No. 29/2013 vide award dated 06.01.2014.

2. Facts of the case leading to filing of claim petition are that on the fateful day i.e. on 26.12.2011, at about 4.30 pm while Ram Bharos Sori (Since deceased) aged about 45 years riding bicycle, respondent No. 1- Balgopal Das by driving rashly and negligently the offending Vehicle (Truck) bearing registration No. OR/15/L/8621 dashed the bicycle of the Rambharos Sori, as a result of which he sustained grievous injuries thereafter, for treatment he shifted to Bilaigarh Govt. Hospital where he declared dead.

3. As against compensation of Rs. 33,50,000/- claimed by unfortunate wife and children of deceased- Rambharos Sori, by filing claim petition under Section 166 & 140 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 26.12.2011, the Tribunal awarded a total sum of Rs. 16,12,120/- as compensation along with interest @ 6 percent per annum from the date of filing of claim petition till its actual payment to the appellants/claimants.

4. The Tribunal, on a close scrutiny of the evidence, held : the accident had occurred due to rash and negligent driving of respondent No. 1- Balgopal Das dashed the bicycle of deceased - Ram Bharos Sori due to which, he sustained multiple injuries and succumbed to these injuries. Learned Tribunal, after considering the material available on record awarded aforesaid sum as compensation in favour of claimants and further held that respondent No. 3/Insurance Company held liable to pay compensation to the claimants as it could not establish the violation of policy conditions.

5. Learned counsel for the appellants/claimants submits that on the date of accident the deceased was aged about 45 years, and he was working as a Head Master in the Govt. Primary School, Gaardih at the time of accident and he was earning Rs. 26,675/- per month vide Ex. A/14 but the learned Tribunal has fallen in error in assessing the income of the deceased as Rs.12,620/- per month and thereby awarding low compensation of Rs. 16,12,120/- whereas deceased being a Govt. employee, it ought to have considered at least Rs. 26,675/- per month. He also submits that the Tribunal has erred by not awarding sufficient amount under the incidental head as well as the Tribunal has not awarded any sum towards Future prospect. He further submits that in the matter of **Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram & Ors.** in **Civil appeal No. 9581 of 2018** arising out of **SLP[Civil] No. 3192 of 218** the Hon'ble Supreme Court has granted amount for filial arant from awarding towards other conventional heads, therefore, it is prayed for award of filial as parental head for the children of the deceased.

6. On the other hand, learned counsel for respondent No. 3/The Oriental Insurance Company Limited submits that the amount awarded by the Claims Tribunal for the death of deceased- Rambharos Sori is just and proper, which does not call for any interference in the instant appeal.

7. I have heard learned counsel appearing for the parties and perused the impugned award including the record of Claims Tribunal.

8. So far as income of the deceased is concerned, though the claimants have pleaded that the deceased was earning Rs. 23525 but as per Ex. A/14 i.e. a document relating to deceased salary shows the deceased salary as Rs. 26,675/- per month by working as Head Mater in the Govt. Primary School, Gaardih, however, considering the fact that the accident occurred in the year 2014, being a government employee at the relevant time, the income of the deceased can be taken as aforesaid. Further, from the evidence adduced by the parties, the deceased was about 45 years of age at the time of accident, therefore, keeping in view the decision in **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680 & Sarla Verma (Smt.) & Others V. Delhi Transport Corporation and anr. reported in 2009 (6) SCC121**, there should be 30% addition in the annual income of the deceased towards future prospect as a government employee and the applicable multiplier would be 14 as applied by the Tribunal. This apart the claimant is also entitled for a sum of Rs.70,000/- under the incidental heads in view of decision rendered by the Supreme Court in the matter of **Pranay Sethi (supra)**. In the matter of **Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram & Ors.(Supra)** the Hon'ble Supreme Court has granted amount for filial, apart from awarding towards other conventional heads, which, in the facts & circumstances of the case, is applicable to present case and in my considered opinion, Rs. 15,000/- should be added as filial (parental heads).

9. On the basis of above, I propose to re-compute the amount of compensation as under :-

Sl. No.	Heads	Calculation
01.	Income of the deceased	Rs.26,675x12=Rs.3,20,100/- per annum

02.	30% of above to be added towards future prospects	Rs = 3,20,100+96,030/-= Rs. 4,16,130/-
03.	After 1/4th deduction towards personal and living expenses of the deceased	Rs.4,16,130 –Rs.1,04,032/- Rs.3,12,098/-
04.	Multiplier of 14 to be applied	Rs.3,12,098 x 14 =4369372
05	Towards (Loss of Estate, funeral, Consortium & Parental head)	Rs. 70,000+ 15,000/-
	Total Compensation	Rs.44,54,372./-

10. Since, the Tribunal has already awarded a sum of Rs. 16,12,120/- after deducting the same from the amount as calculated above, the claimant is held for an additional compensation of Rs.28,42,252/-. This additional amount shall carry interest at the rate of 6% per annum from the date of claim application till its realization. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

11. The respondent No. 3/The Oriental Insurance Company Ltd. shall deposit the enhanced amount of compensation of Rs. 28,42,252/- along with interest at the rate of 6% per annum before the concerned Tribunal. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge