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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 363 of 2014**

1. Suraj Kaiwart S/o Dhannulal Kaiwart Aged About 2 Years Minor,
2. Kumari Durga Kaiwart D/o Dhannulal Kaiwart Aged About 8 Years
3. Dhannulal Kaiwart S/o Jhangalu Ram Kaiwart Aged About 28 Years

Appellant Nos. 1 & 2 are minor and represented through natural guardian their father Dhannulal Kaiwart, aged about 28 years.

All R/o Bhothidih, Gram Panchayat- Lawar, Tah. And P.S. Masturi, Distt. Bilaspur C.G.

----Appellants**Versus**

1. Kaptan Singh S/o Ranbahadur Singh R/o Jamwari, P.S. Mushafir Khana, Janpad Sultanpur U.P., (Driver of Truck Bearing No. UP32-Z-3276) Through- Owner Avdesh Kumar Mishra, S/o Late Chhedilal Mishra, R/o 103/82 Sundarbag, P.S. Kaisharbag, Janpat- Lucknow U.P.
2. Avdesh Kumar Mishra S/o Late Chhedilal Mishra R/o 103/82 Sundarbag, P.S. Kaisharbag, Janpat- Lucknow U.P. (Owner of Truck Bearing No. UP32-Z-3276)
3. The Oriental Insurance Company Ltd. DO-3, Lucknow Office Near Matiyari Crossing Beside Union Bank Of India, Faizabad Road, Lucknow U.P.,
4. Through- Local Office- Divisional Manager, The Oriental Insurance Company Ltd., First Floor, Rama Trade Center, Opposite To Rajeev Plaza, Bus Stand, Bilaspur, Distt. Bilaspur C.G.

---- Respondents

For Appellants	Shri Rajesh Jain, Advocate.
For Respondent no.3	Shri Sandeep Shrivastava, Advocate.

MAC No. 362 of 2014

1. Dhannulal Kaiwart S/o Jhangalu Ram Kaiwart Aged About 28 Years
2. Kumari Durga Kaiwart D/o Dhannulal Kaiwart Aged About 8 Years

3. Suraj Kaiwart S/o Dhannulal Kaiwart Aged About 2 Years

Appellant nos. 2 to 3 are Minor, Through natural guardian their father Dhannulal Kaiwart,

All R/o Bhothidih, Gram Panchayat- Lawar, Tah. And P.S. Masturi, Distt. Bilaspur C.G.

----Appellants

Versus

1. Kaptan Singh S/o Ranbahadur Singh R/o Jamwari, P.S. Mushafir Khana, Janpad- Sultanpur U.P. (Driver of Truck Bearing No. UP32-Z-3276) Through- Owner Avdesh Kumar Mishra S/o Late Chhedilal Mishra, R/o 103/82 Sundarbag, P.S. Kaisharbag, Janpad- Lucknow U.P.
2. Avdesh Kumar Mishra S/o Late Chhedilal Mishra R/o 103/82 Sundarbag, P.S. Kaisharbag, Janpad- Lucknow U.P. (Owner of Truck Bearing No. UP32-Z-3276)
3. The Oriental Insurance Company Ltd. DO-3 Lucknow Office Near Matiyari Crossing Beside Union Bank Of India, Faizabad Road, Lucknow U.P., Through- Local Office- Divisional Manager, The Oriental Insurance Company Ltd., First Floor, Rama Trade Center, Opposite To Rajeev Plaza, Bus Stand, Bilaspur, Distt. Bilaspur C.G.

---- Respondents

For Appellants
For Respondent no.3.

Shri Rajesh Jain, Advocate.
Shri Sandeep Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

04/12/2018

1. As both these appeal arise out of the award dated 18.11.2013 passed by the 6th Additional Motor Accident Claims Tribunal, Bilaspur, C.G. in Claim Cases No.33/2013 in MAC No.363/2014 and 32/2013 in MAC No.362/2014, they are being disposed of by this common judgment.
2. As per averments in the claim petitions, on the date of accident

i.e. 4-3-2012 Smt.Bisahin Bai, aged about 26 years along with her son Gulshan Kumar, aged about 5 years was travelling in a jeep. After getting down from the jeep while she was giving fare charges to the driver of the jeep, at that time non applicant no.1 Kaptan Singh by driving truck bearing no. UP32-Z-3276 in a rash and negligent manner dashed Bisahin Bai and Gulshan Kumar and some other persons sitting in the jeep. As a result of this accident, Bisahin Bai, Gulshan Kumar and some other persons died on the spot. At the time of accident, the offending vehicle was owned by non applicant no.2 and insured with non applicant no.3.

3. On separate claim petitions under Section 163A of the Motor Vehicle Act being filed by legal representatives of deceased Smt. Bisahin Bai and deceased Gulshan kumar i.e. claim cases no. 32/13 and 33/13 respectively. The Tribunal considering the evidence led by the parties by the impugned award granted compensation in favour of the claimants in claim case no. 32/13 of Rs 4,17,500/- and Rs. 1,54,500/- in claim case no.33/13 with interest @ of 7.5 percent per annum from the date of application till its realization, fastening the liability on non-applicant no.3/Insurance Company jointly and severally, along with non-applicants no.1 & 2/ Driver and Owner of the offending vehicle.

4. **MAC No.362/13:-** Learned counsel for the appellants submits that though he has raised various grounds in the memo of appeal, he is assailing the impugned award only on the ground

that the Tribunal was not justified in not granting any amount towards future prospect and also not justified in granting meager amount under the conventional heads. Reliance has been placed on the decision of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

5. **MAC No.363/2013**:- Learned counsel for the appellants submits that the Tribunal was not justified in awarding Rs.1,54,500/- for the death of deceased Gulshan Kumar aged about 5 years and in view of decision of Hon'ble Supreme Court in ***Kishan Gopal and another Vs. Lala and others, (2014) 1 SCC 244,*** at least Rs.5 lacs has to be awarded as compensation.
6. On the other hand, learned counsel for the respondents supporting the impugned award submits that the amount awarded by the Tribunal is just and proper and needs no interference by this Court.
7. Heard both the parties and perused the material available on record.
8. **MAC No.362/2013**:- As regards the assessment of income of the deceased Bisahin Bai @ of Rs.3,000/- per month, the age as 25 years, 1/3 deduction towards personal and living expenses, application of multiplier, the same are just and proper and has not been disputed by learned counsel for the appellants. However, considering the age of the deceased and the nature of her job, there has to be 40% addition to the income of the deceased

towards future prospect in view of decision of Hon'ble Supreme Court in ***Pranay Sethi*** (supra). Likewise, under the conventional heads also the claimants are entitled for a total sum of Rs.70,000/-. Thus, the claimants are entitled for compensation in the following manner:-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.3,000/- per month.	Rs.36,000/-per annum (as assessed by the Tribunal)
02.	40% of (i) above to be added towards future prospects.	Rs.14,400/- Rs.36,000 + Rs.14,400 = Rs.50,400/-
03.	1/3 deduction towards personal and living expenses of the deceased	Rs.16,800/- Rs.50,400 – Rs.16,800 = Rs.33,600/-
04.	Multiplier of 17 to be applied	Rs.5,71,200/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total compensation	Rs.6,41,200/-

Since the Tribunal has already awarded Rs.4,17,500/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,23,700/- with interest @ 7.5% per annum from the date of application till realization

9. MAC No.363/2014:- The Hon'ble Supreme Court in the matter of ***Kishan Gopal and another Vs. Lala and others, (2014) 1 SCC***

244, wherein a child aged about 10 years died in the motor vehicular accident occurred on 19.07.1992 and the claimants were young parents, considering its various earlier decisions awarded Rs.5 lacs towards total loss of dependency.

10. Thus, in view of the aforesaid decision, looking to the age of the father i.e. 28 years, that of the deceased i.e. 5 years, this Court is of the opinion that the appellants/claimants are entitled for a total sum of Rs.5 lacs as compensation. Since, the Tribunal has already awarded Rs.1,54,500/-, after deducting the same, the claimants are held entitled for additional compensation of Rs.3,45,500/- with interest @ 7.5 per annum from the date of application till realization.

11. In the result, both the appeals are allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/-
Gautam Chourdiya
Judge