

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 866 of 2018**
Reserved on 09/10/2018**Delivered on 16.11.2018**

1. Smt. Gayatri Uraon W/o Suresh Kumar Uraon, aged about 22 years,
2. Minor Roshan S/o Late Suresh Uraon, aged about 1 year 6 month. Through legal gurdian Smt. Gaytri Uraon.
3. Mangal Singh Uraon S/o Ghaniram Uraon, aged about 50 years,
4. Sukanti Uraon W/o Mangal Singh Uraon, aged about 47 years,

All R/o Village Chotiguda, Tahsil Gharghoda, District- Raigarh (C.G.).

---- Appellants**Versus**

1. Chhabilal Sahu S/o Narayan Sahu, Occupation Vehicle driver, R/o Dhimrapur Chowk, Tahsil and District Raigarh C.G.
2. Mukesh Kumar Patel S/o Ayodhya Prasad Patel, Occupatin Vehicle Owner, R/o Harri Jhariya, P.S. Bhupdevpur, Tahsil and District Raigarh C.G.
3. Branch Manager, The New India Insurance Company Ltd., Satigudi Chowk Raigarh, District Raigarh C.G..

---- Respondents

For Appellants	:Shri Hemant Sahu, Advocate
For Respondent No. 3	: Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya
CAV Judgment

1. This claimants' appeal seeking enhancement of compensation awarded by the 4th Additional Motor Accident Claims Tribunal, Raigarh (for short 'the Tribunal') in claims case No. 113/2018.

2. Facts of the case leading to filing of claim petition are that on the fatefully day i.e. 04.10.2016, at about 2.45 pm Suresh Uraon was going back to his home from Gharghoda Court by his motorcycle, on the way near Gharghoda-Lailunga highway respondent No.1- Chhabilal Sahu the driver of the offending vehicle Swift Dezire bearing registration No. CG 013-U/6561 driving the vehicle rashly & negligently, dashed the motorcycle and the deceased namely Suresh Uraon, who was at the time of accident 25 years of age and working as Head Cook, died on the spot. In the instant case, appellants No. 1 & 2 are the wife & child of the deceased and appellants No. 3 & 4 are the parents of the deceased.

3. As against the compensation of Rs. 30,73,600/- claimed by the unfortunate wife, child and parents of deceased-Suresh Uraon, aged about 25 years, by filing application under Section 166 of Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 04.10.2016, the Tribunal awarded a total sum of Rs. 5,69,000/- as compensation along with interest @ 9 percent per annum from the date of application till its actual payment to the appellants/claimants.

4. The Tribunal, on a close scrutiny of evidence led, material placed and submissions made by the parties, held : the accident had occurred due to involvement of offending vehicle Swift Dezire bearing registration No. CG 013-U/6561 being driven by Chhabilal Sahu (driver of the offending vehicle) dashing the deceased -Suresh Uraon who was going back to his home from Gharghoda Court by his motorcycle. Learned Tribunal, after considering the material available on record fastened the liability to pay compensation upon the respondent No. 3/Insurance Company as it could not establish the violation of policy condition and awarded aforesaid sum as compensation to the appellants/claimants.

5. Learned counsel for the appellants/claimants submits that the deceased was about 25 years of age but the Tribunal has erred in

applying the multiplier of 17 in view of the judgment of the Supreme Court in the matter of **Sarla Verma (Smt.) & others V. Delhi Transport Corporation and another** reported in **2009 (6) SCC 121**, the learned Tribunal has considered the income of the deceased as Rs.4,500/- per month, which is also on the lower side. He also submits that the Tribunal has wrongly considered the contributory negligence and deducted 1/4th of the award under the head. He further submits that learned Claims Tribunal has not given any amount for future prospects and the amount awarded towards funeral expenses and loss of estate is also very much on the lower side.

6. On the other hand, learned counsel for respondent No. 3 submits that the amount awarded by the Claims Tribunal for the death of deceased -Suresh Uraon 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, the deceased was at the time of accident 25 years of age and there is no specific evidence regarding his income except the statements of wife- Smt. Gayatri Uraon/appellant No. 1, therefore, without there being any specific evidence regarding income, as per evidence available on record, the learned Tribunal has considered Rs.4,500/- as monthly income of the deceased at the time of accident i.e. 20.06.2011, which in the considered opinion of this Court, cannot be found faulted with. As regards the age of the deceased is concerned, though the claimants have pleaded that at the time of accident the deceased was 25 years of age however, no evidence has been adduced by them in this regard whereas according to the Postmortem report, the deceased is mentioned as 26 years of age, therefore, the Tribunal was justified in holding the deceased between the age group of 26 to 30 years and applying the multiplier of 17. However, towards future prospects nothing has been awarded by the Tribunal. Therefore, keeping in view of the decision in **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680** & **Sarla Verma**

(Smt.) (supra), I propose to re-compute the amount of compensation as under:-

Sl. No.	Heads	Calculation
01.	Income of the deceased	Rs. 4,500 x12 =54,000 per month
02.	40% of above to be added towards future prospects	Rs54,000 +21,600=75,600/-
03.	1/4th deduction towards personal and living expenses of the deceased	Rs. 18,900/-
04.	Multiplier of 18 to be applied	Rs. 56,700x17= 9,63,900/-
05	Towards loss of estate, and for funeral expenses	Rs. 70,000/-
	Total Compensation	Rs.10,33,900

9. So far as the contributory negligence is concerned, considering the facts and circumstances of the case, the manner in which the accident occurred, this Court is of the opinion that the Tribunal was not justified in holding the deceased contributory negligence and deducting $\frac{1}{4}$ th under the said awarded amount.

10. Thus, the claimants would become entitled for Rs.10,33,900/- as compensation in place of 5,69,000/- as awarded by the Tribunal.

11. In view of foregoing, the appeal is partly allowed. The compensation of Rs.5,69,000/- awarded by the Tribunal is enhanced to Rs.10,33,900/-. The above enhanced amount of compensation of Rs.4,64,900/- shall carry interest @ 9% per annum from the date of application till its actual payment. Rest of the conditions mentioned in the award shall remain intact. The award stands modified to the above extent.

12. The respondent No. 3/Insurance Company, Raigarh is granted three months' time to deposit enhanced amount of compensation of

Rs.4,64,900/- along with interest before the concerned Tribunal. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

Amita