

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 1230 of 2014**

1. Ku. Srishti Haldar D/o Shri Kishore Kumar Haldhar, aged about 18 years.
2. Amit Kuma Haldhar S/o Shri Kishore Kumar Haldhar, aged about 16 years, (No. 2 through sister Ku. Srishti Haldhar D/o Shri Kishore Haldhar) Both are R/o Nehru Colony, Kirandul, Police Station Kirandul, Tahsil Kuwakonda, District South Bastar Dantewada (C.G.)

---- Appellants**Versus**

1. Kishore Kumar Haldhar S/o Late B.K. Haldhar, aged about 43 years, R/o Nehru Colony, Kirandul, Police Station Kirandul, Tahsil Kuwakonda, District South Bastar Dantewada (C.G.) (Driver and owner of alleged vehicle)
2. I.C.I.C.I. Lombard General Insurance company Limited, Branch Officer, Jagdalpur, Tahsil Jagdalpur, District - Bastar (C.G.)

---- Respondents

For Appellants	:	Ms. Laxmeen Kashyap, Advocate.
For Respondents 1	:	None.
For Respondent No.2	:	Shri Tarkeshwar Nade, Advocate

Hon'ble Smt Justice Rajani Dubey**Order On Board****07/12/2018**

1. This appeal arises out of the award dated 01.09.2014 passed by II Additional Motor Accident Claims Tribunal (for short the "Tribunal") South Bastar, Dantewara in Claim Case No.180/2014 awarding a compensation of Rs.3,96,000/- in favour of the appellants/claimants for the death of Smt. Laxmi

Haldhar.

2. Facts of the case in brief are that on 09.06.2012 at about 03.30 PM, Smt. Laxmi Haldhar along with her husband Kishor Kumar Haldhar (respondent No.1) and family members were coming to Kirandul from Umarkot in their Alto Car bearing registration No.CG-18-C-0835. When they reached near village Jawanga, Police Station Gidam, their car turned turtled due to rash and negligent driving of Kishor Haldhar - respondent No.1 as a result of which Smt. Laxmi Haldhar sustained grievous injuries on her head, thereafter, she was taken to Gidam Hospital for treatment, from where she was referred to N.M.D.C. Hospital and when they reached the hospital, the Doctor declared her brought dead. A claim petition was filed by the appellants/claimants (daughter and son) who happens to be the legal heirs of the deceased claiming a compensation of Rs.30,30,000/- *inter alia* pleading that the deceased at the relevant time was aged about 36 years, she was skilled labour and working as Ladies Tailor and earning Rs.10,000/- per month.

3. Pleading of the claimants 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.3,96,000/- along with interest @ 9% per annum in favour of the appellants/claimants taking the notional income of the

deceased as Rs.3,000/- per month and Rs.36,000/- per annum, applying the multiplier of 16 and deducting Rs.12,000/- towards her personal expenses. Hence, this appeal for enhancement.

5. Counsel for the appellants/claimants submits that the Tribunal has erred in law in not awarding adequate compensation to the claimants. She also submits that the notional income has been considered by the Tribunal as Rs.36,000/- per annum whereas it ought to have been considered Rs.72,000/- per annum. Learned counsel for the appellants 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.3,96,000/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

10. True, the claimants/appellants pleaded that deceased used to earn Rs.10,000/- per month by working as Ladies Tailor, no cogent and reliable evidence was led before the Tribunal to establish the income of the deceased to the extent of Rs.10,000/- per month. Only certificate of proficiency in Tailoring & Embroidery (Ex.A-10-C) issued by Usha International Ltd. in favour of deceased Laxmi Haldhar has been produced, which does not demonstrate the fact that the deceased was earning Rs.10,000/- per month, rather it can safely be inferred that she was a skilled labour. Therefore, this Court do not find any fault in the approach of the Tribunal in discarding the appellants' evidence about the income of the deceased. Nevertheless, the notional income of the deceased assessed by the Tribunal at Rs.3,000/- per month and Rs.36,000/- per annum in the year 2012 is certainly on the lower side considering the fact that deceased was a skilled labour and requires reconsideration.

11. Considering that deceased Laxmi Haldhar, on the date of accident, was aged about 36 years and at the time of incident she was skilled labour, this Court is of the opinion that she

could have easily earned Rs.6,000/- per month in the year 2012 by doing Tailoring & Embroidery 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 lady and 36 years of old at the time of accident. Hence, future prospect at 50% of the actual income of the deceased is required to be taken, thus, the amount comes to Rs.36,000/- (50% of Rs.72,000/-). Further, there being two claimants, the deduction of 1/3rd towards personal expenses of the deceased from her annual income would be just and proper. Accordingly, by deducting 1/3rd from the annual income of the deceased, the claimants' dependency is assessed at Rs.72,000/- per annum.

12. Looking to the age of the deceased and two claimants/appellants, at the time of accident, this Court of the opinion that the Tribunal has not rightly applied the multiplier in this case. In fact, for the age group of 36-40 years, multiplier of 15 has to be applied and not 16 as per the Schedule. Therefore, the multiplier is taken as 15 and compensation is assessed to Rs.72,000/- x 15 = Rs.10,80,000/-. That apart, the Tribunal has awarded Rs.10,000/- and Rs.2,000/- under the head loss of love and affection and funeral expenses, 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 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 claimants/appellants are entitled for compensation in the following manner:-

Head	Compensation awarded
Income	Rs.6,000/-
Future Prospect	Rs.3,000/- (i.e. 50% of the income)
Deduction towards living and personal expenses	Rs.3,000/- (i.e. 1/3rd of Rs.6,000/- + Rs.3,000/-)
Total Income	Rs.6,000/- (Rs.9,000 - Rs.3,000)
Yearly Income	Rs.72,000/- (Rs.6,000/- x 12)
Multiplier applied	15
Loss of future income	Rs.10,80,000/- (Rs.6,000/- x 12 x 15)
Loss of Estate, Loss of Consortium and Funeral Expenses	Rs.70,000/-
Total compensation awarded	Rs.11,50,000/-

13. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.11,50,000/- (10,80,000/- + 70,000/-) for which the claimants are entitled to receive as compensation for the death of deceased Smt. Laxmi Haldhar. Since the Tribunal has already awarded

² (2017) 16 SCC 680

Rs.3,96,000/-, after deducting the same the claimants/appellants are entitled for enhanced amount of Rs.7,54,000/-. This additional amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till realization. The amount received by the claimants, 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