

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 275 of 2014**

1. Mus. Anusuyeeya Sahu, aged about 30 years, widow of Late Nand Ram Sahu,
2. Sandeep @ Raju aged about 11 years, son of Late Nandram Sahu
3. Mukesh Sahu, aged about 09 years, son of Late Nandram Sahu,
4. Vikas Sahu, aged about 07 years, son of Late Nandram Sahu
5. Gayatri Sahu, aged about 4 years, daughter of Late Nandram Sahu

Appellants No. 2 to 5 are minors through their natural guardian Mother i.e. appellant No. 1 Mus. Anusuyeeya Sahu.

All are resident of- village Lingiya Deeh, Police Station- Sarkanda, Distt. Bilaspur (C.G.).

---- Appellants**Versus**

1. Mannu Lal Chandrasen, aged about 35 years, son of Shri Gokul Prasad Chandrasen, resident of village Hathmudi, P.S. Kunda, distt. Kabeerdham (C.G.).
2. IFFCO Tokeo General Insurance Company Ltd., Branch Manager, Lalganga shopping Maal Shop No. 345-347, G.E. Road, Raipur, through the Branch Manager, IFFCO Tokeo General Insurance Company Ltd. Link Road, Bilaspur (C.G.)
3. Raja Ram Sahu, aged about 70 years, son of Late Gokul Sahu
4. Dasoda Sahu, wife of Shri Rajaram Sahu, aged about 65 years,

Respondents No. 3 and 4 are the resident of village Mahli, P.S. Kunda, Distt. Kabeerdham (C.G.).

---- Respondents

For Appellant	: Ms. Neeta Choubey, Advocate
For Respondent No. 2	: Shri Amrito Das, Advocate

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board**16.11.2018**

This is claimants' appeal seeking enhancement of compensation awarded by the Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Tribunal') in claim case No. 07/2013 vide award dated 10.02.2014.

2. Facts of the case leading to filing of claim petition are that on the fateful day i.e. on 30.04.2011 Nandram aged about 32 years, who was the pillion rider of the motorcycle, was going towards Kawardha to Pandriya and when they reached in front of Police Station of Pandatarai, respondent No. 1- Mannulal Chandrasen driver of another motor cycle bearing registration No. CG-09/D-7607 (offending vehicle), driving the vehicle rashly and negligently, dashed the motor cycle on which the deceased was the pillion rider, as a result of which, deceased sustained multiple injuries and due to the injuries sustained by him in the accident, he died on the spot.

3. As against compensation of Rs. 21,82,000/- claimed by unfortunate parents, wife and children of deceased- Nandram, by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 30.04.2011, the Tribunal awarded a total sum of Rs. 4,75,800/- as compensation along with interest @ 6 percent per annum from the date of application 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- Mannulal Charndrsen who dashed the motorcycle in which Nandram was pillion driver, 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. 2/Insurance Company is liable to pay compensation to the claimants.

5. Learned counsel for the appellants/claimants submits that on the date of accident the deceased was aged about 32 years and he was working as a Mason (Rajmistri) at the time of accident and his earning was Rs. 9,000/- per month but the learned Tribunal has fallen in error in assessing the notional income of the deceased as Rs.3,000/- per month and thereby awarding low compensation of Rs. 4,75,000/- whereas as per minimum wages of the labour, it ought to have considered at least Rs. 4,500/- per month. She also submits that the Tribunal has erred by not awarding sufficient amount under the incidental head.

6. On the other hand, learned counsel for respondent No. 2 submits that the amount awarded by the Claims Tribunal for the death of deceased- Nandram 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. Learned counsel for both the parties submit that there is no counter appeal by the Insurance Company. So far as income of the deceased is concerned, though the claimant has pleaded that the deceased was earning Rs. 9,000/- per month, however, no documentary or oral evidence has been adduced in support thereof. Considering the fact that the accident occurred in the year 2011, as per minimum wages of self employed at the relevant time, the notional income of the deceased can be taken as Rs. 4,500/- per month. Further, from the evidence adduced by the parties, the deceased was about 32 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 40% addition in the annual income of the deceased towards future prospect as a self employed person and the applicable multiplier would be 16 in view of the decision of Supreme Court Judgment in **Sarla Verma(Supra)**. 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 **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680.** 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.4,500x12=Rs.54,000/- per annum
02.	40% of above to be added towards future prospects	Rs = 54,000+21,600/-= Rs. 75,600/-
03.	1/4th deduction towards personal and living expenses of the deceased	Rs. 75,600-18,900 = Rs.56,700/-
04.	Multiplier of 16 to be applied	Rs.9,07,200./-
05	Towards incidental heads	Rs. 70,000/-
	Total Compensation	Rs.9,77,200/-

9. Since, the Tribunal has already awarded a sum of Rs. 4,75,800/- after deducting the same from the amount as calculated above, the claimants are held for an additional compensation of Rs. 5,01,400/-. 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.

10. The respondent No. 2/IFFCO Tokyo General Insurance Company Ltd. is granted two months' time to deposit enhanced amount of compensation of Rs. 5,01,400/- along with interest before the concerned Tribunal. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita