

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****MAC No. 375 of 2012**

1. Smt. Anjeera Kalchuri, Wd/o. Late Balwant Singh Kalchuri, Aged about 65 years,
  2. Santosh Kumar Kalchuri, S/o. Late Balwant Singh Kalchuri, Aged about 36 years,
- Both R/o. Sant Kabeer Ward, Urkura, Police Station Khamtarai,  
District Raipur Chhattisgarh

**---- Appellants****Versus**

1. Shamim Azam, S/o. Qamruzama Musalman, Aged about 20 years, R/o. Village Sariya Post Amila, Police Station Mubarkpur, District Azamgarh (U.P.) Present address- K.M.C. Construction Mata Nala Saraipali, Police Station Saraipali, District Mahasamund Chhattisgarh (Driver)
2. M/s. Zee Construction, Raigarh, Tahsil and District Raigarh Chhattisgarh (Owner)
3. Sunil Kumar Jindal, R/o. Urghana Nala Raigarh, Tahsil and District Raigarh Chhattisgarh
4. Reliance General Insurance Company Limited, Through: Branch Manager, Reliance General Insurance Company Limited 3<sup>rd</sup> Floor Ravi Bhawan, Raipur, District Raipur Chhattisgarh

**---- Respondents**


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For Appellants : Mr. Suresh Tandan, Advocate

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**Hon'ble Shri Justice P. Sam Koshy**  
**Order on Board**

**28/02/2018**

1. The present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 07.01.2012, passed by the 4<sup>th</sup> Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 127/2011.
2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.1,09,405/- with interest @ 7.5% per annum from the date of application.

3. The contention of the counsel for the appellants is that the income assessed by the Tribunal is on the lower side, so also the compensation under the conventional head is on the lower side and the same deserves to be enhanced. The deduction of  $\frac{1}{2}$  from the income made by Tribunal towards personal expenses also is erroneous as the deceased admittedly was a married man and the Claimant No.1 was his wife. He submits that the Claimant in the instant case was a Doctor by profession and the income assessed by the Tribunal is even less than what was received by an unskilled labour. Thus, the income assessed deserves to be suitably enhanced.
4. None appears for the respondents inspite of proper service being made upon them. Considering the seniority of the matter, this Court is inclined to proceed with the appeal taking assistance of the counsel for the appellants and taking into consideration the records of the case.
5. The date of accident in the instant case undoubtly is 09.02.2009. The vehicle involved in the accident, the vehicle being duly insured with the respondent No.4 and the vehicle being driven by the respondent No.1 are not in dispute. The period of accident being February, 2009. Though there is no substantial evidence brought on record by the Claimants to prove his income. Even for assessment of a notional income, it cannot be less than the income of an unskilled labour earning during the relevant point of time i.e. in February, 2009.
6. This Court has no hesitation in reaching to the conclusion that even an unskilled labour would had been earning Rs.5000/- per month.

Thus, this Court assesses the income of the deceased at Rs.5000/- instead of Rs.3000/- as assessed by the Tribunal. Assessing Rs.5000/- per month, the yearly income would come to Rs.60,000/-, of which if  $\frac{1}{3}$  is deducted towards personal expenses, the amount left would be Rs.40,000/-, which when multiplied by applying the multiplier of 5, the amount would come to Rs.2,00,000/-.

7. It is ordered that the Claimants would be entitled for an amount of Rs.2,00,000/- towards loss of dependency, instead of Rs.90,000/- as assessed by the Tribunal. The Claimants shall also be entitled for a lump sum amount of Rs.70,000/- under conventional head to make the total compensation payable at Rs.2,70,000/- instead of Rs.1,09,405/-.
8. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.
9. Thus the appeal stands allowed and disposed off.

Sd/-  
**(P. Sam Koshy)**  
Judge

Ved