

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 955 of 2018

Reserved on 1-8-2018

Decided on 9-8-2018

1. Smt. Nirmala Sharma Wd/o Late Bhanu Prasad Sharma aged about 52 Years (Wife Of Deceased) R/o Ward No.44, Sanjay Nagar, Chantideeh, Police Station Sarkanda, District (Revenue And Civil) Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
2. Rajesh Kumar Sharma S/o Late Bhanu Prasad Sharma aged about 28 Years R/o Ward No.44, Sanjay Nagar, Chantideeh, Police Station Sarkanda, District (Revenue And Civil) Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
3. Rakesh Sharma S/o Late Bhanu Prasad Sharma aged about 24 Years R/o Ward No.44, Sanjay Nagar, Chantideeh, Police Station Sarkanda, District (Revenue And Civil) Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Appellants.

Versus

1. Dushyant Kumar Kashyap S/o Suritram Kashyap R/o Near Chandani Chowk, Kududand, Police Station Civil Line, District (Revenue And Civil) Bilaspur, Chhattisgarh (Driver/owner Of Vehicle Motor Cycle No. C.G.10 N.B./2861), District : Bilaspur, Chhattisgarh
2. Divisional Manager United India Insurance Company Limited, Division Office Gurukripa Tower, Vyapar Vihar Road, Bilaspur, District (Revenue And Civil) Bilaspur, Chhattisgarh (Insurer Of Vehicle Motor Cycle No. C.G.10 N.B./2861), District : Bilaspur, Chhattisgarh

---- Respondents

For Appellants	:	Mr. Anand Kesharwani, Advocate.
For respondent No.2	:	Mr. Raj Awasthy, Advocate.

SB: Hon'ble Mr. Justice Ram Prasanna Sharma

CAV Order

1. The claimants/appellants, being wife and sons of the deceased and dependants on the deceased Bhanu Prasad Sharma who died in a motor accident on 10-7-2016, have preferred this

appeal under Section 173 of the Motor Vehicle Act, 1988 against the award dated 5-3-2018 passed by the 4th Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No. 30 of 2017, wherein the said Tribunal awarded compensation of Rs.4,30,072/- on account of death of Bhanu Prasad Sharma in a motor accident.

2. As per case of the claimant/appellants, on 10-7-2016 deceased Bhanu Prasad Sharma was going to his house at Sanjay Nagar and he was a pedestrian and when he reached near Main Road, Jabelapara, the respondent No.1/driver of the offending vehicle Pulsar bike bearing registration No. CG 10-NB-2861 driving the said vehicle rashly and negligently dashed him as a result of which he sustained grievous injuries and thereafter he was shifted to CIMS hospital, Bilaspur and he died on the next day during the course of treatment.
3. The matter was reported to Police Station Sarkanda on the basis of which case was registered against respondent No.1 under Section 304 (1) of IPC and thereafter the matter was investigated. The claim petition was filed by the wife of the deceased namely Smt. Nirmala Sharma and sons. After hearing both the parties, the tribunal awarded the compensation as mentioned above.

4. Learned counsel for the appellants submits as under:

- i) The Tribunal had very miserly calculated the income of the deceased at Rs.100/- per day which is less than minimum wages and it has to be enhanced;
- ii) The Tribunal has not granted any amount on account of future prospects which is bad-in-law.
- iii) The Tribunal should have granted interest @ 12% from the date of incident.
- iv) The amount awarded by the tribunal under various permissible heads is on lower side which requires to be enhanced.

5. On the other hand, learned counsel appearing for the respondent No.2 would submit that the finding arrived at by the Tribunal is based on proper assumption and the same cannot be termed as unjust or improper.

6. I have heard learned counsel for the parties and perused the record and impugned award passed by the Tribunal.

7. As per evidence led by the appellants, the deceased was a skilled labour and made qualitative bags and again he was working as Priest in religious events and his income was Rs.20,000/- per annum, but no one examined on behalf of the appellants who paid the amount to the deceased for preparing bags or for performing religious work. In absence of any evidence, income of the deceased shall be assessed to

Rs, 6000/- per month as per minimum wages prevailing. On the date of incident i.e., 10-7-2016, minimum wages prevailing was Rs.200/- per day., therefore, notional income of the deceased comes to Rs.6000/- per month. If 1/3rd of the said amount is deducted for his personal expenses and remaining Rs.4,000/- per month is loss of dependency of the claimants that comes out to Rs.48,000/- per annum. As the age of the deceased was 55 - 60 years on the date of incident, if multiplier of 9 is applied, total dependency comes out to Rs.4,32,000/-. 10% is allowed for future prospects which comes to Rs.43,200/-.

8. As per law laid down by Hon'ble the Apex Court in the matter of **National Insurance Company Limited vs. Pranay Sethi, reported in AIR 2017 SC 5157**, the amount on conventional head is Rs.70,000/-. In this way, the total sum requires to be awarded is Rs.5,45,200/-.

9. Accordingly, the appeal is partly allowed and the award passed by the Tribunal is modified as under:

- i) Respondent No.2 Insurance Company shall pay Rs. 5,45,200/- to the appellants/claimants within 60 days from the date of passing of the order and will pay interest @ 9% from the date of filing the claim petition i.e., 11-1-2017.
- ii) Respondent No.2 shall pay cost of the

appellants through out.

- lii) The amount deposited shall be disbursed to the appellants/claimants as per direction of the Tribunal.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju