

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 236 of 2014**

1. Smt. Panchbai Bewa W/o Late Basant Yadav Aged About 44 Years
2. Namita Yadav D/o Late Basant Yadav Aged About 22 Years
3. Sunita Yadav D/o Late Basant Yadav Aged About 19 Years
4. Yogesh S/o Late Basant Yadav Aged About 17 Years Minor,
5. Mukesh S/o Late Basant Yadav Aged About 12 Years

Appellants No. 4 & 5 Minors, Through their Mother Smt. Panchbai Bewa
(Appellant No.1)

All R/o of village Chandrapur, P.S. And Tah. Surajpur, Distt. Surajpur C.G.

----Appellants**Versus**

1. The Oriental Insurance Company Ltd. Through- its Branch Manager, Branch Office, Ambedkar Chowk, Ambikapur, Tah. Ambikapur, Distt. Ambikapur C.G.
2. Kishan Singh S/o Anil Singh R/o House No. 162, Bhatti Road, Mayapur Village, P.O., P.S. And Tah. Ambikapur, Distt. Sarguja C.G.
3. Smaran Jon Kujur S/o Ibrahim Jon Kujur Aged About 49 Years R/o Patna, P.S. Ramanujnagar, Distt. Surajpur C.G., District : Surajpur, Chhattisgarh

---- Respondents

For Appellants

Shri Pragalbha Sharma, Advocate.

For Respondent No.1

Ms. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Order On Board

29/11/2018

1. This is claimants' appeal for enhancement of compensation awarded by the 2nd Additional Motor Accidents Claims Tribunal, Surajpur, District Surajpur, C.G. in Claim Case No. 311/2011 vide award dated

31.01.2013.

2. As against the compensation of Rs. 16,40,000/- claimed by the widow and children of deceased –Basant Yadav by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for his death in the motor accident dated 03.07.2011, the Tribunal has awarded a total sum of Rs.4,55,200/- as compensation along with interest at 9% per annum from the date of award till its actual payment, fastening the liability upon all respondents jointly and severely.
3. The Tribunal, on a close scrutiny of the evidence led before it, held that the accident had occurred due to rash and negligent driving of Chhota Haathi bearing registration CG15-AC-0950 by its driver Smaran Jon; deceased –Basnat Yadav, aged about 45 years, earning Rs.7,000/- per month as a Supervisor died on account of injuries sustained by him in the said accident.
4. Learned counsel for the appellants submits that the Tribunal has erred in assessing the monthly income of the deceased at Rs.3000/- whereas the deceased being a Supervisor was earning Rs.7,000/- per month. Further, the Tribunal has committed an error by not granting any amount towards future prospects whereas considering the age of the deceased, which was held by the Tribunal to be 45 years, 25% of his monthly income was to be added thereto towards future prospects in view of judgment of the Hon'ble Apex Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.*** He submits that the Tribunal has also awarded a meager amount under the conventional heads and the same is liable to be enhanced

suitably. Lastly, he submits that the Tribunal has also erred in granting interest on the awarded amount from the date of award whereas it should have been from the date of filing of the claim petition till its payment.

5. On the other hand, learned counsel appearing for respondent No.1 submits that the amount of compensation awarded by the Tribunal is just and proper compensation in the facts and circumstances of the case and needs no interference. Further, he submits that the Tribunal has wrongly deducted 1/5 towards personal and living expenses of the deceased whereas it should have been $\frac{1}{4}$, in view of decision of Hon'ble Supreme Court in ***Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121.***
6. I have heard learned counsel for the parties and perused the award impugned including the record of the Tribunal.
7. So far as determination of age of the deceased to be 45 years is concerned, the Tribunal has assessed the age of the deceased on the basis of marriage intimation (Ex.A-2) and postmortem report (Ex.A-3). No evidence was adduced by the non-applicants in rebuttal. Thus, the determination of age of the deceased as 45 years appears to be just and proper. However, the Tribunal was not justified in making 1/5 deduction from the income of the deceased towards his personal and living expenses as the deceased was married on the date of accident and having 5 dependents on him, in view of **Sarla Verma** (Supra), there should be $\frac{1}{4}$ deduction under this head. In this case, the age of the deceased was 45 years so application of multiplier of 14 is correct. However, the Tribunal appears to have fallen in error in assessing the

income of the deceased at Rs.3000/- per month. From the pleadings of the claimants, the nature of job of the deceased, as also the minimum wages at the relevant time, the monthly income of the deceased can safely be taken at Rs.4,000/- i.e. Rs.48,000/- per annum. Considering the age of the deceased i.e. 45 years and the nature of his job i.e. self-employment, in view of judgment in **Pranay Sethi** (supra), 25% of his annual income is to be added thereto towards future prospects. Likewise, the Tribunal has also erred in awarding Rs.6,000/- - 6,000/- only for loss consortium and loss of estate which is required to be enhanced to Rs.40,000/- & Rs. 15,000/- respectively. Thus, the Tribunal was not justified in awarding interest on the compensation amount from the date of award and it should have been from the date of filing of the claim petition. Therefore, the claimants are held entitled for compensation in the following manner:

Head	Calculation
Income of the deceased	Rs. 4,000/- x 12 = Rs.48,000/- per annum.
25% towards future prospect	Rs. 12,000/- Rs.48,000+ Rs. 12,000= 60,000/-
1/4 deduction towards personal and living expenses of the deceased	Rs.60,000- 15,000/- = 45,000/-
Multiplier of 14 applied (For assessing loss of dependency)	Rs.45,000/- x 14 = 6,30,000/-
For loss of estate	Rs.15,000/-
For Loss of Consortium	Rs.40,000/-
For Funeral	Rs. 20,000/- (as awarded by the Tribunal)
For Love and Affection	Rs. 20,000/- (as awarded by the

	Tribunal)
Total	Rs7,25,000/-

8. In the result, the appeal is allowed in part. Since, the Tribunal has already awarded a sum of Rs.4,55,200/-, after deducting the same from the amount as calculated above, the claimants are held for an additional compensation of Rs.2,69,800/-. This additional amount as well as the amount awarded by the Tribunal shall carry interest at the rate of 9% per annum from the date of claim application till its realization. The award is modified to the above extent. However, Rest of the conditions of the award shall remain intact.

8. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh