

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 605 of 2014**

- Smt. Mongra Bai Sahu aged about 50 years W/o late Laxmi Chand Sahu, R/o Village- Chaprid Post Samoda, Thana- Aarang Tahsil & district- Raipur (C.G.).

---- Appellant**Versus**

1. Narendra Sahu S/o bhalchand Sahu aged about 22 years, Occupation Vehicle motor cycle driver, R/o,- Village, Chaprid, Post-Samoda, Thana- Aarang Tahsil & district- Raipur (C.G.).
2. Parmanand Sahu S/o Laxmi Chand Sahu Occupation vehicle motor cycle owner R/o,- Village, Chaprid Post, Samoda, Tahsil & Thana- Aarang District- Raipur Thana Aajad Chouk, Raipur (C.G.)
3. I.C.I.C.I. Lombard general Insurance Company, Ltd., Through, Branch, Manager, Branch Office Unit No. 304,306- Third Mala Lalganga Shopping Mal G.E. Road Raipur, Distt.- Raipur (C.G.).

(Policy No. 3005/15942157/21020/000 date of Period 9/4/12 To 8/4/13 Tak)

---- Respondents

For Appellant	: Shri A. L. Singrol, Advocate
For Respondent No. 1 & 2	: None
For Respondent No. 3	: Shri Amrito Das, Advocate with Shri P. Acharya, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

23.10.2018

This is claimants' appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Raipur (for short 'the Tribunal') in claim case No. 37/2012 vide award dated 22.01.2014.

2. Facts of the case leading to filing of claim petition are that on the fateful day i.e. 03.05.2012 at about 2.00pm, respondent No. 1- Narendra Sahu was driving the Motorcycle bearing registration No.CG04KC/0693 very rashly and negligently and deceased namely Laxmichand Sahu was the pillion rider who was at the time of accident 60 years of age and earning 2,00,000/- by agriculture work. In the National Highway No. 6 near the village Rasni patrol Pump respondent No. 1- Narendra Sahu overtook the truck in a rash and negligent manner, dashed the truck, resultantly Laxmichand Sahu came under the wheel of the truck and due to this he sustained grievous injuries. When he was taken to the hospital on the way he died. In the instant case, appellant No. 1 is the wife of the deceased.

3. As against compensation of Rs. 35,50,000/- claimed by unfortunate wife of deceased- Laxmichand Sahu, 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 03.05.2012, the Tribunal awarded a total sum of Rs. 2, 69,000/- as compensation along with interest @ 6 percent per annum from the date of application till its actual payment to the appellant/claimant.

4. The Tribunal, on a close scrutiny of the evidence led, held : the accident had occurred due to rash and negligent driving of Motorcycle bearing registration No. No.CG04-KC/0693 by Narendra Sahu by overtaking the truck and dashing the said vehicle resultantly Laxmichand Sahu came under the wheel of the truck and due to this he sustained grievous injuries and succumbed to these injuries. Learned Tribunal, after consid-

ering the material available on record fastened the liability to pay compensation upon the respondents No. 1, 2 & 3 jointly and severally. There is no counter appeal by the Insurance Company.

5. Learned counsel for the appellants/claimants submits that on the date of accident the deceased was about 55 years of age and his earning was Rs. 2,00,000/- from agriculture work but the learned Tribunal considered the Notional income of deceased as 3,000/- per month as per minimum wages of the labour it ought to have been considered atleast Rs. 4,000/- per month. He also submits that the Tribunal has erred in applying the multiplier of 8 as per second schedule of Section 163A of Motor Vehicle Act whereas in view of the judgment of the Supreme Court in the matter of **Sarla Verma (Smt.) & others V. Delhi Transport Corporation and another**¹, considering the age of the deceased in between 56-60 years, the multiplier of 9 should have been used. Future prospect is also not provided to the claimants. Lastly he submits that the Tribunal has further committed illegality by not awarding any amount under the incidental head.

6. On the other hand, learned counsel for respondent No. 3 submits that the amount awarded by the Claims Tribunal for the death of deceased- Laxmi Chand Sahu 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. So far as income of the deceased is concerned, though the claimant has pleaded that the deceased was earning Rs. 2,00,000/- annual income from agriculture, however, no evidence in this regard has been adduced by the claimant who substantiated the said pleadings. Therefore, for want of any evidence regarding income of the deceased, considering the fact that the accident occurred in the year 2012, at that

1

2009 (6) SCC 121

relevant time of accident, minimum wages in the price index, the notional income of the deceased can be taken as Rs. 4,000/- per months. Further from the evidence adduced by the parties, the postmortem report and the inquest report it appears that the deceased was about 60 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 10% addition in the annual income of the deceased towards future prospect, the applicable multiplier would be 9 and 1/3 from the annual income would be deductible towards personal expenses, not ½ as has been done by the Tribunal. This apart the claimant is also entitled for a sum of Rs.70,000/- under the incidental heads in view of decision of Pranay Sethhy (Supra). 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. 4,000x12= 48,000/- per annum
02.	10% of above to be added towards future prospects	Rs. 48,000+4800= 52800/-
03.	1/3th deduction towards personal and living expenses of the deceased	Rs. 52800/3= 17600 52800-17600/-=35,200/-
04.	Multiplier of 9 to be applied	Rs. 35200x9= 316800/-
05	Towards incidental heads	Rs. 70,000/-
	Total Compensation	Rs.386800/-

9. Since, the Tribunal has already awarded a sum of Rs.

2,69,000/- after deducting the same from the amount as calculated above, the claimant is held for an additional compensation of Rs. 1,17,800/-. 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. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

Amita