

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1272 of 2018

1. Dharmin Bai Gupta W/o Late Koushal Prasad Gupta, aged about 60 years
2. Jitendra Kumar Gupta S/o Late Koushal Prasad Gupta, aged about 45 years
3. Shailendra Kumar Gupta S/o Late Koushal Prasad Gupta, aged about 37 years

All R/o Bandhawapar Chandra Mouli Near Shiv Mandir Sarkanda Tahsil and District Bilaspur (Chhattisgarh)

---- Appellants/Claimants

Versus

1. Rajat Sao S/o Mahesh Sao, aged about 21 years, R/o Family Planning Nutan Chowk G. 4 Thana Sarkanda Tahsil and District Bilaspur (Chhattisgarh) (Driver of the offending vehicle Car No. 10/I.Q./5522)
2. Mahesh Sao S/o Late Sohan Lal Sao, aged about 55 years, R/o Family Planning Nutan Chowk G. 4 Thana Sarkanda Tahsil and District Bilaspur (Chhattisgarh) (Owner of the offending vehicle Car No. 10/I.Q./5522)
3. Through Branch Manager, Bajaj Alliance General Insurance Company Limited, Divisional Shiv Mohan Bhawan, Vidhan Shabha Road Pandri Distrit Raipur (C.G.) (Insurer of the offending vehicle Car No. 10/I.Q./5522)

---- Respondents

For Appellants	:	Shri A.L. Singroul, Advocate
For Respondent No.3	:	Shri Utsav Mahiswar, Advocate
For Respondents 1 & 2	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

08.10.2018

1. Being aggrieved with the order dated 24.09.2016 passed in Claim Case No. 903 of 2014 by the Fourth Additional Motor Accident Claims Tribunal, Bilaspur, the Appellants/Claimants has preferred this appeal under Section 173 of the Motor

Vehicles Act, 1988.

2. The claimants/Appellants, unfortunate wife and sons of deceased- Koushal Prasad, age about 70 years.

3. This appeal filed by the Claimants/Appellants only on the sole ground that the Tribunal has wrongly deducted $\frac{1}{2}$ of the income of the deceased whereas as per ***Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121***, there being three dependents, the deduction would be $\frac{1}{3}$ rd towards personal and living expenses of the deceased. This apart the Tribunal has also awarded Rs.40,000/- only under conventional heads whereas as in view of the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Ors., (2017) 16 SCC 680***, Rs.70,000/- ought to have been awarded under this head.

4. Learned counsel for Respondent No.3/Insurance Company opposes the contention made by the learned counsel for the Appellant and submits that only Dharmin Bai Gupta/Appellant No.1, wife of the deceased, is dependent and Appellants 2 and 3 are not dependents. He also submits that the learned Tribunal has rightly deducted 50% towards personal expenses of the deceased and therefore, there is no need to interfere with the award impugned.

5. I have heard the learned counsel appearing for the parties and perused the impugned order including the records of the Claims Tribunal.

6. As regards the income of the deceased, it is not in dispute that the deceased was getting Rs.14,826/- per month as pension which has been duly proved before the Tribunal. In this case, the deceased was a married person and therefore in view of the decision in *Sarla Verma* (supra) $\frac{1}{3}$ rd from the annual income of the deceased is to be deducted towards personal expenses. Further in view of the decision in *Pranay Sethi* (supra) Rs.70,000/- has to be awarded under the

conventional heads. Thus, the claimants are entitled for compensation in the following manner:

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.14,826/- per month i.e. Rs.1,77,912/- per annum
2	1/3rd deduction towards personal and living expenses of Deceased	(Rs.1,77,912/- – Rs.59,304/-) Rs.1,18,608/-
3	Multiplier of 5 applied	Rs.1,18,608/- x 5 = Rs.5,93,040/-
4	Towards loss of consortium, loss of estate and for funeral expenses	Rs.70,000/-
	Total	Rs.6,63,040/-

Since the Tribunal has already awarded Rs.06,24,780/-, after deducting the same from the above amount, the Claimant is held entitled for additional compensation of Rs.38,260/-.

7. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimants/Appellants shall be entitled to a total enhanced amount of compensation of Rs.38,260/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

8. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge