

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 168 of 2015**

1. Shivkumari Sahu W/o Late Shambhu @ Govardhan Sahu Aged About 27 Years
2. Kumari Sangita D/o Late Shambhu @ Govardhan Sahu Aged About 11 Years
3. Rahul @ Sandip Kumar S/o Late Shambhu @ Govardhan Sahu Aged About 5 Years
4. Dilchand Sahu S/o Puniram Sahu Aged About 55 Years
5. Krishno Bai W/o Dilchand Sahu Aged About 50 Years

Appellants No. 2 & 3 minor through mother natural guardian, appellant No.1 Shivkumari Sahu W/o Late Shambhu @ Govardhan Sahu, aged about 27 years, All R/o Village and Post Hirri, Police Station and Tahsil Masturi, District (Revenue and Civil) Bilaspur (CG)

**---- Appellants
claimants**

Versus

1. Hirdayram S/o Paluram @ Sammelal Kenwat/kaiwart R/o Village- Khaprideeh, P.S. And Tah. Bilaigarh, Distt. Baloda Bazar-Bhatapara C.G., (driver of tractor No. CG 04 DT 3871 and trolley No. CG 04 DT 3872)
2. Bodhan Patel S/o Indalsai Patel Aged About 50 Years R/o Village- Khaprideeh, P.S. And Tah. Bilaigarh, Distt. Baloda Bazar-Bhatapara C.G. (owner of tractor No. CG 04 DT 3871 and trolley No. CG 04 DT 3872)
3. L And T. General Insurance Company Ltd. S/o Chief Executive, Branch Office, 1st Floor, Mechanical Mol, A-103, Naya Pali, Bhuneshwar Odissa, District : Bhubaneswar, Orissa (Insurer of tractor No. CG 04 DT 3871 and trolley No. CG 04 DT 3872)

---- Respondents

For Appellants	:	Shri Anand Kesharwani, Advocate.
For Respondent No.1&2:	:	Shri Abhishek Pandey, Advocate.
For Respondent No.3	:	Shri Rohitashva Singh, Advocate on behalf of Shri NK Thakur, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

07/12/2018

Heard on IA No.01, application for condonation of delay in filing the appeal.

02. For the reasons mentioned in the above application, which is

duly supported by affidavit, the same is allowed and delay in filing appeal is hereby condoned.

03. Heard on admission.

04. The appeal being argument on merits is admitted for hearing.

05. With the consent of the parties, the matter is heard finally today itself.

06. This appeal is by the claimants against the award 28.8.2014 passed by III Additional Member to the I Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.2/2013 awarding total compensation of Rs.4.79 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

07. As per claim petition, on 5.4.2012 when deceased Shambhu @ Goverdhan Sahu was sitting at a betel shop at Village – Rachhabhanta, non-applicant No.1 by driving the tractor bearing No. CG 04 DT 3871 and trolley No. CG 04 DT 3872 in a rash and negligent manner dashed Shambhu as a result of which Shambhu suffered grievous injuries and died during treatment in hospital. Crime was registered against non-applicant No.1 under Section 304A of IPC. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

08. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

09. Learned counsel for the appellants/claimants submits that the Tribunal has wrongly considered income of the deceased as Rs.3000/- per month whereas even as per minimum wages, it comes to Rs.4500/-. Further, no amount towards future prospect has been given and in view of decision in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, there should be 40% addition in the annual income of the deceased under this head and likewise, under the

conventional heads also the Tribunal has awarded on the lower side which needs to be enhanced to Rs.70,000/- as per *Pranay Sethi* decision. However, he does not dispute rest of the assessment made by the Tribunal.

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

06. Heard learned counsel for the parties and perused the material available on record.

07. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.10000/- per month by running a hotel and betel shop, but no documentary or oral evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4500/- per month as per minimum wages at the relevant time. Hence, keeping in view the decision in *Sarla Verma* and *Pranay Sethi* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.4,500/- per month.	54,000/- per annum
02.	40% of (i) above to be added towards future prospects	54,000 + 21,600 = 75,600/-
03.	1/4th deduction towards personal and living expenses of the deceased	75,600 – 18,900 = 56,700/-
04.	Multiplier of 17 to be applied	9,63,900/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total compensation	Rs.10,33,900/-

Since the Tribunal has already awarded Rs.4.79 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.5,54,900/-, with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

08. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/

(Gautam Chourdiya)

Judge