

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1519 of 2018**

1. Smt. Premlata Wd/o Anil Patel, aged about 30 years, Occupation- Ashrit,
2. Minor Bhumi Patel S/o Late Anil Patel, aged about 3 years 6 months, Occupation Reading, through legal guardian mother/appellant No. 1.
3. Tarachand Patel S/o Late Manbodh Patel, aged about 55 years,
4. Smt. Madhumati Patel W/o Tarachand Patel, aged about 50 years, Occupation- dependent,

All R/o Village Loing, P.S. Chakradhar Nagar, Tahsil and District- Raigarh (C.G.).

---- Appellants/Claimants**Versus**

1. Sanjay Kumar Upadhyay S/o Bhuneshwar Upadhyay, Occupation Driver, aged about 28 years, R/o Nav Jivan Society Dhamtari, Road Pachpedi Naka Raipur (C.G.).
2. Jaiprakash Upadhyay S/o Bhuvneshwar Upadhyay, Occupation Vehicle Owner Tata Model C.G. 04J.C. 5834, R/o Nav Jivan Society Dhamtari Road Pachpedi Naka, Raipur, C.G.
3. Branch Manager, The New India Insurance Company Raigarh, District- Raigarh C.G.
4. Ravindra Kumar Nayak S/o Dular Singh Nayak, aged about 40 years, Occupation Owner Scorpiyo C.G. 13 N. 7777.

R/o Village Bar P.S. Sariya, Tahsil Baramkela, District Raigarh C.G.

5. Naresh Mehar S/o Salikram Mehar, aged about 35 years, Occupation Driver, R/o Village Loing, P.S. Chakradhar Nagar, Tahsil and District- Raigarh C.G.
6. Branch Manager Chola Mandal Insurance Company Ltd. Near Axis Bank, Raigarh, Distt. Raigarh, C.G.

---- Respondents

For Appellants : Shri Hemant K. Patel, Advocate
 For Respondent No. 3 : Shri Dashrath Gupta, Advocate
 For Respondent No. 6 : Shri Ghanshyam Patel, Advocate

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

05.12. 2018

(1) This appeal has been preferred by the claimants, who are unfortunate parents, wife and daughter of deceased – Dr. Anil Patel against the award dated 09.03.2018 passed by Second Additional Motor Accident Claims Tribunal, Raigarh in Claim Case No.16/2017 awarding total compensation of Rs.51,74,899/- along with interest @ 8% per annum from the date of filing of claim petition till its actual payment, fastening liability on the non-applicant No. 3.

(2) Brief facts of the case, as per claim petition, is that on the date of accident i.e. 06.04.2016, respondent No. 1 – Sanjay Kumar Upadhyaya, while driving the offending vehicle (Tata) bearing registration No. CG. 04J.C./5834 rashly and negligently, dashed the vehicle of deceased Dr. Anil Patel, as a result thereof he sustained multiple injuries and thereafter, he was taken to the hospital at Primary health Centre Jagdalpur and then he was shifted to Narayani Hospital, Raipur during treatment he died on 6.6.2016.

(3) Learned counsel for the appellants/claimants would submit that deceased – Dr. Anil Patel was working as Aayurvedik doctor and as per his appointment order (Ex. P/18) the deceased was appointed as Ayush Medical Officer (BAMS) and was earning 20,000/- per month salary. The Claims Tribunal has considered the income of deceased Rs. 20,000/- per month for the purpose of computation of compensation but no future prospect was given by the Claims Tribunal in view of the judgment of the Hon'ble Supreme Court in the matter of

National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.

(4) Learned counsel for the respondent No. 3/Insurer of the offending vehicle would submit that looking to the age of deceased as 32 years at the time of accident, Claims Tribunal has fallen in error in applying multiplier of 18 in place of 16 in view of judgment of the Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121*** and therefore, the amount of compensation awarded by the Tribunal is shockingly on higher side which deserves to be suitably reduced. He also submits that since the deceased was not a salaried employee paid employee therefore, in view of the decision of Judgment of the Supreme Court in the matter of ***Pranay Sethi (supra)*** no any amount towards future prospect ought to have been given to the claimants and the amount awarded towards incidental head is also on the higher side, which deserves to be suitably reduced.

(5) Learned counsel for the respondent No. 6- Chola Mandlam Insurance Company Limited would support the impugned award passed by the Claims Tribunal.

(6) I have heard learned counsel appearing for the parties and perused the impugned award.

(7) It is not in dispute that the deceased was the qualified person and was working as Ayush Medical Officer and obtaining fixed salary from the authority concerned. Thus, looking to his job and his qualification, it cannot be held that the claimants, who are parents, wife and children of deceased, are not entitled for amount towards future prospect in view of the ***Pranay Sethi (supra)***. The Tribunal has rightly

awarded amount toward medical treatment given to the deceased as per document produced by the claimants vide Ex. P/3 & Ex. P/4 i.e. medical bills of deceased.

(8) Learned counsel for the respondent No. 3/Insurance Company has rightly pointed out this fact that at the time of accident, deceased was aged about 32 years as per MLC report Ex. P/5, as per Final Report Ex. P/8 & Merg intimation Ex.P/9 and other documents clearly show that at the time of accident the deceased was 32 years of age, therefore on the basis of aforesaid documents, it is proved that the deceased was 32 years of age at the time of accident, therefore in view of Apex Court Judgment in the matter of Sarla Verma (Supra) the multiplier of 16 would be applicable in place of 18. In view of the aforesaid judgments and finding, I propose to re-compute the amount of compensation in following manner:-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased	Rs.20,000/- per month i.e. 2,40,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs.2,40,000 +Rs.96,000/- =Rs.3,36,000
03.	1/4 th deduction towards personal and living expenses of the deceased	Rs.3,36,000-84,000/-= Rs.2,52,000/- (as deducted by the Tribunal)
04.	Multiplier of 16 to be applied (loss of dependency)	Rs.2,52,000 x 16=- Rs. 40,32,000/-
05.	Towards medical expenses	Rs.15,84,899+ 1,00,000/-

		=16,84,899/-
06.	Towards Incidental heads in view of Pranay Sethi (supra)	Rs. 70,000/-
07.	Total compensation	Rs.57,86,899/-

Since the Tribunal has already awarded Rs. 51,74,899/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.6,12,000/- along with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/-

(Gautam Chourdiya)

Judge