

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.1466 of 2018**

1. Hariram Baghel S/o Ranjan Baghel aged about 21 years,
2. Santosh Baghel S/o Ranjan Baghel aged about 18 years;
3. Chhotu Baghel S/o Ranjan Baghel aged about 14 years (minor) through Hariram Baghel (Brother).

All R/o Village Hazariguda Village Panchyat Pandaripani P.S. Frezerpur District- Bastar (C.G.).

---- Appellants**Versus**

1. Rajuram Yadav S/o Kamalu Yadav aged about 29 years R/o. Nakapara Village Bastanar Through Dashmu Ram Gayakwad S/o Baldev Singh Gayakwad Clerk House No. 54 ward No. 4 R/o. Nakapara Village Bastanar (Kodenar) District- Bastar (C.G.) (Driver of the Vehicle)
2. Dashmu ram Gayakwad S/o Baldev Singh Gayakwad Cleerk House No. 54 ward No. 4 R/o Nakapara Village Bastanar (Kodenar) District- Bastar (C.G.)(Owner of the Vehicle).
3. The New India Assurance Co. Ltd. Through Branch Office Jagdalpur at Akaswani road Gandhinagar Ward M.M. Tower Jagdalpur District- Bastar (C.G.)(Insurer).
4. Ranjan Baghel S/o Budhram Baghel aged about 46 years R/o Kotwarpara Village Parpa District- Bastar(C.G.)(Non applicant).

---- Respondents

For Appellant : Shri P. K. Tulsyan, Advocate
 For Respondent No. 1 :Shri Kalpesh Patel, Advocate on
 behalf of Shri P. R. Patanker, Advocate
 For Respondent No.3 : Shri Kamrul Aziz, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

13.11.2018

This is claimants' appeal seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Bastar-Jagdalpur (for short 'the Tribunal') in claim case No. 144/2017 vide award dated 17.05.2018.

2. Facts of the case leading to filing of claim petition are that on the fateful day i.e. on 07.08.2017, while deceased Mahadei Baghel aged about 38 and working as Cook at Late Baliram Kashyap Memorial Medical College, Dimrapal was going to medical college from her brother house by a motorcycle as pillion rider, respondent No. 1- Rajuram Yadav by driving rashly and negligently the offending Vehicle (Tavera) bearing registration No. C.G.-17-C/3444 dashed the motorcycle in which the deceased was pillion rider, as a result of which she sustained grievous injuries and died on spot.

3. As against compensation of Rs. 18,75,000/- claimed by unfortunate children of deceased- Mahadei Baghel, by filing claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 07.08.2017, the Tribunal awarded a total sum of Rs. 12,90,000/- as compensation along with interest @ 9 percent per annum from the date of filing of claim petition till its actual payment to the appellants/claimants.

4. Learned Tribunal, after considering the material available on record awarded aforesaid sum as compensation in favour of claimants and further held that respondent No. 3/Insurance Company held liable to pay

compensation to the claimants as it could not establish the violation of policy conditions.

5. Learned counsel for the appellants/claimants submits that on the date of accident the deceased was aged about 38 years, and working as Cook at Late Baliram Kashyap Memorial Medical College, Dimrapal at the time of accident and she was earning Rs. 9,000/- per month but the learned Tribunal has fallen in error in assessing the income of the deceased as Rs.7,500/- per month and thereby awarding low compensation of Rs. 12,90,000/- whereas deceased being a cook, it ought to have considered at least Rs. 9,000/- per month

6. On the other hand, learned counsel for respondent No. 3/The Oriental Insurance Company Limited submits that the amount awarded by the Claims Tribunal for the death of deceased- Mahadei Baghel is just and proper, and income assessed by the Tribunal is also on higherside 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 claimants have pleaded and proved that the deceased was earning Rs. 9,000/- per month by working as Cook at Late Baliram Kashyap Memorial Medical College, Dimrapal. The statement of Hariram Baghel (AW1) and Nishikant Panigrahi (AW3) also supports the pleadings of the claimants that the deceased was earning 9,000/- per months. As per Ex. A/9 it is clear that the monthly income of the deceased was Rs. 9,000/-. Thus, the income of the deceased assessed by the Tribunal at Rs. 7,5,00/- is against the pleadings and evidence on record and the same is considered as Rs. 9,000/- per month. However, considering the fact that the accident occurred in the year 2017, being a cook at the relevant time, the income of the deceased can be taken as aforesaid. Further, from the evidence adduced by the parties, the deceased was about 38 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.**, there should be 40% addition in the annual income of the deceased towards future prospect as a Self employed and the applicable multiplier would be 15 in view of the decision of Supreme Court in the matter of **& Sarla Verma (Smt.) & Others V. Delhi Transport Corporation and anr.** reported in **2009 (6) SCC121**. This apart the claimant is also entitled for a sum of Rs.30,000/- under the incidental heads in view of decision rendered by the Supreme Court in the matter of **Pranay Sethi (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.9,000x12=Rs.1,08,000/- per annum
02.	40% of above to be added towards future prospects	Rs = 1,08,000+43,200/-= Rs1,51,200/-
03.	After 1/3th deduction towards personal and living expenses of the deceased	Rs.1,51,200 –Rs.50,400/- Rs.1,00,800/-
04.	Multiplier of 15 to be applied	Rs.1,00,800 x 15 =15,12,000
05	Towards incidental heads	Rs. 30,000/-
	Total Compensation	Rs.15,42,000./-

9. Since, the Tribunal has already awarded a sum of Rs. 12,90,000/- after deducting the same from the amount as calculated above, the claimant is held for an additional compensation of Rs.2,52,000/-. This additional amount 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. Rest of the conditions of the award shall remain intact.

10. The respondent No. 3/ The New India Assurance Co. Ltd is granted two month's time to deposit enhanced amount of compensation of Rs. 2,52,000/- along with interest before the concerned Tribunal. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

Amita