

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1484 of 2018**

1. Smt. Sundari Wd/o Late Koso @ Kosoram Kashyap Aged About 60 Years
2. Miss Mohanbati Kashyap D/o Late Koso @ Kosoram Kashyap Aged About 21 Years
3. Miss Palaki @ Pakali D/o Late Koso @ Kosoram Kashyap Aged About 17 Years, now she become Major Aged About 18 Years. (Now) therefore represented herself.
4. Manakuram Kashyap S/o Late Koso @ Kosoram Kashyap Aged About 37 Years,

All are R/o Village Sirisguda Tokapal, P.S. Bandaji, District Bastar, Chhattisgarh.

---- Appellants/Claimants

Versus

1. Mahesh @ Bablu S/o Late Lakhuram Aged About 23 Years, R/o Village Singanpur Sonarpal Khaspara Tahsil Tokapal, P.S. Parpa District Bastar, Chhattisgarh. (Driver Of The Vehicle)
2. Smt. Neetu Joshi W/o Shri Prafull Joshi R/o Titirgaon Joshipara Tahsil Jagdalpur, P.S. Parpa, District Bastar, Chhattisgarh. (Owner Of The Vehicle)
3. The United Insurance Co. Ltd. Through Branch Manager Branch Office at Opposite Anupama, Talkies Jagdalpur District Bastar, Chhattisgarh. (Insurance Co.)

---- Respondents

For Appellants	Shri P.K. Tulsyan, Advocate.
For Respondent No.3	Shri R.N. Pusty, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

16/11/2018

1. By the instant appeal, the appellants/claimants are challenging the legality and validity of the award dated 07.07.2018 passed by the 3rd

Additional Motor Accident Claims Tribunal, Bastar Place Jagdalpur, C.G (in short "Claims Tribunal") in Claim Case No.137/2017, whereby the learned Claims Tribunal awarded total compensation of Rs. 4,58,400/- along with interest @ 6 percent per annum from the date of application till its actual payment and fastened the liability on respondent No. 3 – Insurance Company for satisfying the award of compensation.

2. Brief facts of the case, are that on 23.07.2017 deceased -Sundar Kashyap, aged about 30 years, unmarried, who was working as a Mason, was returning to his home by a motor cycle and when he reached near Kumhrawad Agriculture College, at the same time the respondent No.1 driving the Tipper vehicle bearing registration No. CG17-H-3309 rashly and negligently, dashed the vehicle of deceased. The deceased received severe injuries and died on the spot. The claimants, who are Mother, Sisters and Brother of deceased -Sundar Kashyap, filed claim application before the Tribunal claiming compensation to the tune of Rs. 11,98,000/- from the respondents under various heads.
3. Respondent No.3 – Insurance Company has contested the case by filing its written statement and pleaded that the claim of the claimants is on higher side and also pleaded that vehicle was being driven in breach of terms and condition of insurance policy, as the driver was not holding valid and effective driving licence to drive the offending vehicle.
4. Learned Claims Tribunal after considering the pleadings, evidence and other material available on record, awarded Rs. 4,58,400/- as total compensation to the claimants as mentioned above.

5. Learned counsel appearing for the claimants submits that at the time of accident, the deceased was 30 years of age and was earning Rs.12,000/- per month but the Tribunal has wrongly taken it as Rs.3000/- per month. He also submits that the learned Claims Tribunal has fallen into error in deducting 1/2 towards personal and living expenses of the deceased. Lastly, he submits that the Tribunal has awarded a meager amount under the conventional heads and the same may be suitably enhanced.
6. Per contra learned counsel appearing for the Insurance Company supported the award and submits that the learned Claims Tribunal has passed the impugned award after considering all the facts and circumstances of this case and award passed by the Tribunal is just and proper. He also submits that appellant Nos. 2 & 3 are working as labour, therefore, they are not dependents on the deceased Brother, therefore, Tribunal has rightly deducted 1/2 towards personal and living expenses of the deceased.
7. I have heard the learned counsel for both the parties and perused the records.
8. So far as the income of the deceased is concerned, the claimants have pleaded that the deceased was working as a Mason and thereby earning Rs.12,000/- per month. But no evidence has been adduced by the claimants to substantiate the said plea. In such circumstances, considering the nature of job of the deceased and the minimum wages at the relevant time, his monthly income can safely be taken as Rs.6000/- i.e. 72,000/- per annum. As per evidence of Smt. Sundari and the postmortem report, the deceased was 30 years of age and therefore, the Tribunal was justified in

applying the multiplier of 17. However, the Tribunal has fallen into error in deducting 1/2 towards personal and living expenses of the deceased whereas in view of judgment of Hon'ble Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121**, as there are 3 dependents, the deduction should have been 1/3. Considering the age of the deceased and his nature of job, the Tribunal has already awarded 40% of his annual income towards future prospect and Rs.30,000/- towards conventional heads. Thus, the claimants are held entitled for compensation in the following manner:-

Head	Calculation
Income of the deceased	Rs.6,000/-x12= Rs.72,000/- per annum.
40% towards future prospect	Rs.28,800/- Rs.72,000/- + 28,800 = Rs.1,00,800/-
1/3 deduction towards personal and living expenses of the deceased	Rs.33,600/-
Annual loss of dependency	Rs.1,00,800/- – Rs.33,600/- = Rs.67,200/-
Multiplier of 17 applied for assessing total loss of dependency	Rs.67,200 x 17 = Rs.11,42,400/-
Towards Conventional Heads	Rs.30,000/-
Total	Rs. 11,72,400/-

9. For the reasons mentioned herein above, the appeal is allowed in part. The compensation of Rs.4,58,400/- as awarded by the

Tribunal is enhanced to Rs.11,72,400/-. The appellants are further entitled to receive enhanced amount of compensation of Rs.7,14,000/-, over and above the amount awarded by the Tribunal. The enhanced amount of compensation shall carry interest @ 6% per annum from the date of claim application till its actual payment. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

10. The respondent No.3/United India Insurance Company Limited is granted one month time to deposit the enhanced amount of compensation with interest before the concerned Claims Tribunal from the date of receipt of copy of this order.

11. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh