

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1528 of 2018**

1. Smt. Tulsi Rajwade W/o Late Premsagar Aged About 30 Years
2. Ku. Shilpa D/o Late Premsagar Aged About 13 Years
3. Shashi Rajwade S/o Late Premsagar Aged About 9 Years
4. Ku. Sushama Rajwade D/o Late Premsagar Aged About 2 Years
5. Ku. Sonam Rajwade D/o Late Premsagar Aged About 02 Month,

Appellant Nos. 2 to 5 are minor through Natural Guardian Mother Appellant No. 1 Smt Tulsi Rajwade W/o Late Premsagar Rajwade, All R/o Village Bhakura, Post Parsa P.S. And Tahsil Ambikapur, Distt. Surguja Chhattisgarh.

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Versus

1. Mohan Giri S/o Ramsawaroop Giri Aged About 45 Years R/o Village Asola P.S. And Tahsil Ambikapur Distt. Surguja Chhattisgarh.
2. Subhash Kumar Gupta S/o Late Ghanshyam Rajwade Gupta, Aged About 56 Years R/o Takiya Road Ambikapur P.S. And Tahsil Lakhanpur Distt. Surguja Chhattisgarh.
3. Branch Manager, The United India Insurance Company Ltd Branch Office Brahm Road, Near Kumkum Hotel Ambikapur P.S. And Tahsil Ambikapur, Distt. Surguja Chhattisgarh.

---- Respondent

For Appellants	Shri A.N. Pandey, Advocate.
For Respondent No.3	Shri R.N. Pusty, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board**

28/11/2018

1. This is claimant's appeal for enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Ambikapur, District Surguja, C.G. in Claim Case No. 30/2018 vide award dated 6.07.2018.
2. As against the compensation of Rs.28,17,000/- claimed by the

unfortunate widow & minor daughters of deceased Premasagar Rajwade by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for his death in the motor accident dated 28.10.2017, the Tribunal has awarded a total sum of Rs.8,76,400/- as compensation along with interest at 7% per annum from the date of application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led before it, held that on the date of accident i.e. 28.10.2017, when the deceased was going on his motorcycle being registration No. CG15/DA/4454, his vehicle dashed against the offending truck which was parked in a rash and negligent manner on the road without indicator and parking light. As a result of which, the deceased suffered grievous injuries, he was taken to Medical College, Hospital Ambikapur, C.G., where he died during course of treatment, deceased –Premasagar Rajwade, aged about 35 years, earning Rs.12,000/- per month as a Painter died on account of injuries sustained by him in the said accident; respondent No.3/ Insurance Company Limited is liable for payment of compensation as it could not establish violation of policy conditions; assessed and awarded the aforesaid amount of compensation along with interest at 7% per annum from the date of application till its actual payment.
4. Learned counsel for the appellants submits that the Tribunal has erred in assessing the monthly income of the deceased at Rs.4000/- whereas the deceased being a Painter was earning Rs.12,000/- per month, therefore, the compensation needs to be enhanced suitably.
5. On the other hand, learned counsel appearing for respondent No.3

would submit that the amount of compensation awarded by the Tribunal is just and proper compensation in the facts and circumstances of the case and needs no interference.

6. I have heard learned counsel for the parties and perused the award impugned including the record of the Tribunal.
7. So far as determination of age of the deceased to be 35 years is concerned, the same appears to be just and proper. The Tribunal was justified in granted future prospect at the rate of 40%. Further, the Tribunal was also justified in making $\frac{1}{4}$ deduction from the income of the deceased towards his personal and living expenses. In this case, the age of the deceased was 35 years so application of multiplier of 16 is correct. However, Tribunal appears to have fallen in error in assessing the income of the deceased at Rs.4000/- per month. From the pleadings of the claimants, the nature of job of the deceased, as also the minimum wages at the relevant time, the monthly income of the deceased can safely be taken at Rs.6,000/- i.e. Rs.72,000/- per annum. Therefore, in view of the decisions of Hon'ble Supreme Court in the matters of **Sarla Verma & Ors Versus Delhi Transport Corporation** reported in **2009 (6) SCC 121** & **National Insurance Co. Ltd Versus Pranay Sethi** reported in **(2017) 16 SCC 680**, 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/-
$\frac{1}{4}$ deduction towards personal and living expenses of the deceased	Rs.25,200/-

Annual Loss of dependency	Rs. 1,00,800/- - Rs.25,200/- = Rs. 75,600/-
Multiplier of 16 applied for assessing total loss of dependency	Rs.75,600 x 16 = Rs. 12,09,600/-
Conventional Heads	Rs.70,000/-
Total	Rs.12,79,600/-

8. Since, the Tribunal has already awarded a sum of Rs.8,76,400/-, after deducting the same from the amount as calculated above, the claimants are held for an additional compensation of Rs.4,03,200/-. This additional amount shall carry interest at the rate of 7% 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.

9. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh