

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 401 of 2013**

1. Sunil Ekka S/o Late Lal Sai Ekka Aged About 26 Years Occupation Driver
2. Smt. Birtila Ekka W/o Late Lal Sai Ekka Aged About 44 Years
3. Minor Sushmita D/o Sunil Ekka Aged About 6 Years
4. Minor Sudeep Ekka S/o Sunil Ekka Aged About 4 Years
5. Minor Sumit Ekka S/o Sunil Ekka Aged About 2 Years

Through Father and Nautral Guardian Father Sunil, All by Caste Uraon, R/o Village Salkhadandh, P.S. And Tah. Bagicha, Distt. Jashpur C.G.

----Appellants**Versus**

1. Pawan Singh S/o Late Sujaan Singh R/o Bus Stand Bagicha, P.S. And Tah. Bagicha, Distt. Jashpur C.G.
2. Afrem Toppo S/o Benjamin Toppo Aged About 32 Years Caste Uraon, R/o Village Salkhadandh, P.S. And Tah. Bagicha, Distt. Jashpur C.G.
3. Bajaj Allianz General Insurance Company Ltd. Shiv Mohan Bhawan, Vidhan Shabha Marg Pandri, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants	Shri Aditya Chopra, Advocate.
For Respondent No.3	Shri Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

15/04/2019

This appeal is by the claimants against the award dated 09.01.2013 passed by the Motor Accident Claims Tribunal, Jashpur, C.G. in Claim Case No.34/2011 awarding total compensation of Rs.1,25,000/- with interest @ 6% per annum from the date of

application till realization, fastening liability on the Insurance Company along with non-applicants jointly and severally.

02. As per claim petition, on 14.08.2011 deceased Lalsai Ekka, aged about 48 years, earning Rs.8,000/- per month working as Mason and Agriculturist, died in the motor vehicular accident caused due to rash and negligent driving of Bolero Jeep, bearing no.CG14-B-1901 by non-applicant No.1. At the time of accident, offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

03. On claim petition being filed by the claimants i.e. Wife, Son, Grand Daughter & Grand Son of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.11,84,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellants/claimants submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds:-

- (i) that income of the deceased has wrongly been considered by the Tribunal as Rs.15,000/- per annum whereas it should have been Rs.6,000/- per month.
- (ii) that 1/3rd deduction towards personal and living is also against the law and it should have been 1/5.
- (iii) that multiplier of 11 has wrongly been applied and considering the age of the deceased, it should have been 13.
- (iv) that no amount towards future prospect has been granted to the claimants.

(v) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of **Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121 & National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.**

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.6,000/- per month as Mason and Agriculturist but no documentary 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.4,500/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased as per P.M. Report (Ex.A-2) i.e. 52 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma & 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.	Rs.54,000/- per annum
02.	10% of (i) above to be added towards future prospects.	Rs.5,400/- $\text{Rs.54,000} + \text{Rs.5,400} = \text{Rs.59,400/-}$
03.	1/3 deduction towards personal and living expenses of the deceased	Rs.19,800/- $\text{Rs.59,400} - \text{Rs.19,800} = \text{Rs.39,600/-}$
04.	Multiplier of 11 to be applied	Rs.4,35,600/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses	Rs.70,000/-
	Total compensation	Rs.5,05,600/-

Since the Tribunal has already awarded Rs.1,25,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,80,600/- 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

Akhilesh