**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No. 198 of 2015**

1. Smt. Smita Patel W/o Late Tejram @ Tejshankar Patel Aged About 32 Years

2. Fanindra Kumar Patel Minor S/o Late Tejram @ Tejshankar Patel Aged About 3 Years Minor Through his natural guardian and Mother Smt. Smita Patel @/o Late Tejram @ Tejshankar Patel

3. Smt. Janki Bain Patel W/o Late Khageshwar Prasad Patel Aged About 65 Years

All are R/o Village Salar, Police Staion And Tahsil- Sarangarh, Civil And Revenue District Raigarh C.G.

**----Appellants/Claimants**

**Versus**

1. Riyajul Haq S/o Shri Fazal Haq, Occupation Driver R/o Khalapara Naya Bus Stand, Muzaffar Nagar, Police Station Khalapara, District.- Muzaffar Nagar Uttar Pradesh.

2. S.H. Chand S/o Shri S.H. Anis R/o Village Anangpur, Mathura Road, Faridabad,distt. Faridabad Uttar Pradesh.

3. Reliance General Insurance Company Limited. S/o Branch Merath, District-Merath Uttar Pradesh.

**---- Respondents**

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| For Appellants | Shri Roop Naik, Advocate. |
| For Respondent No.3 | Shri S.S. Rajput, Advocate. |

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

**07.01.2019**

1. This appeal is by the claimants against the award dated 23.01.2015 passed by Additional Motor Accident Claims Tribunal, Sarangarh, District Raigarh, C.G. in Claim Case No.13/13 awarding total compensation of Rs.3,85,000/- with interest @ 6 % per annum from the date of application till realization, fastening

liability on the Insurance Company.

2. As per claim petition, on 26.05.2012 deceased Tejram Patel @ Tejshankar Patel, aged about 35 years, earning about Rs.5,60,000/- per annum working as Agriculturist and also doing some other work, died in the motor vehicular accident caused due to rash and negligent driving of Truck bearing registration no. HR38/G/7013 by non-applicant No.1.

3. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. Learned counsel for the appellants/claimants submits as under:

   (i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3000/- pm.

   (ii) that 1/3rd deduction towards personal and living is also against the law and it should have been ¼.

   (iii) that no amount towards future prospect has been granted to the claimants.

   (iv) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. No amount towards loss of filial and other consortium has been granted.

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***, ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal***

***No.9581/2018 arising out of SLP (Civil) No.3192/2018.***

5. 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.

6. Heard learned counsel for the parties and perused the material available on record.

7. So far as the income of the deceased is concerned, the learned Tribunal has considered the monthly income of the deceased as Rs.3,000/- which is on the lower side. Therefore, in these circumstances, in absence of any proof regarding income, considering the pleadings of the claimant that the deceased was doing agriculture work, keeping in view the minimum wages at the relevant time of the unskilled labour, the income of the deceased can safely be considered as Rs.4,500/- per month. Further, considering the age of the deceased, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi & Magma General Insurance Co. Ltd.* (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/- pm i.e. Rs.54,000/- per annum. |

| | | |
|---|---|---|
| 02. | 40% towards future prospects. | Rs.21,600/- Rs.54,000/- + Rs.21,600/- = Rs.75,600/- |
| 03. | 1/3 deduction towards personal and living expenses of the deceased | Rs.25,200/-<br><br>Rs.75,600 – Rs.25,200 = Rs.50,400/- |
| 04. | Multiplier of 15 to be applied | Rs.7,56,000/- |
| 05. | Towards loss of estate, loss of consortium and funeral expenses | Rs.70,000/- |
| 06. | Towards Parental Consortium to appellant no.2 | Rs.15,000/- |
| 07. | Towards filial consortium to appellant no.3. | Rs.15,000/- |
| | Total Compensation | Rs.8,56,000/- |

Since the Tribunal has already awarded Rs.3,85,000/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,71,000/- 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**