NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 208 of 2015

1. Rupa Bai Wd/o Late Shri Bhupendra Verma, aged about 31 years,

2. Ku. Priyanka Verma D/o Late Shri Bhupendra Verma, aged about 12 years, Minor- Through her mother- Rupa Bai Wd/o Late Shri Bhupendra Verma, aged about 31 years,

3. Ku. Priya Verma D/o Late Shri Bhupendra Verma, aged about 10 years, Minor- Through her mother- Rupa Bai Wd/o Late Shri Bhupendra Verma, aged about 31 years.

4. Ku. Archana Verma D/o Late Shri Bhupendra Verma, aged about 7 years, minor- Through her mother- Rupa Bai Wd/o Late Shri Bhupendra Verma, aged about 31 years,

5. Bela Bai Wd/o Late Shri Hilawan Verma, aged about- 56 years,

   All are Residence of Village- Bhathapara(Sewar), Post- Sewar, Police Station-Chakarbhatha, Tahsil- Bilha, Distt.- Bilaspur (C.G.).

---- Appellants/Claimants

Versus

1. Raju Vishwakarma S/o Shri Purushottam, aged about-34 years, R/o Village- Lahaud, Police Out Post- Lawan, Police Station& Tahsil- Kasdol, Distt.- Baloda Bazar (C.G.)(Driver of Majada No. CG-04-J-8795).

2. Nitesh Keshrwani S/o Shri Narendra Kesharwani, R/o Purana Bus Stand Road, Baloda Bazar, Police Station- City Kotwali, Tahsil & Distt.- Baloda Bazar (C.G.). (Owner of Majada No. C.G.-04-J-8795).

3. The Branch Manager, the New India Insurance Company Ltd., Branch Office- Rama Trade Center, Beside Axix Bank, In front of Rajiv Plaza, Old Bus Stand Road, Bilaspur, Tahsil & Distt.- Bilaspur (C.G.) (Insurer of Majada No. C.G.-04-J-8795).

---- Respondents

For Appellants : Shri R. R. Soni, Advocate.
For Respondent No. 3 :.Shri B. N. Nande, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

06.02. 2019

1. This appeal is by the claimants against the award dated 17.12.2014 passed by the 3rd Additional Member of the Learned 1st Additional Motor Accident Claims Tribunal Bilaspur, Distt.- Bilaspur (C.G.) in Claim Case No.81/2014 awarding total compensation of 4,52,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1to 3 jointly and severely.

02. As per claim petition, on 16.01.2014, deceased- Bhupendra Verma, aged about 34 years, earning Rs.9,000/- per month as mason (doing the work of laying the titles), was going towards village Jokha with his friend Gangaram on motorcycle bearing registration No. CG04-EE/7534 died in the motor vehicle accident caused due to rash and negligent driving of vehicle bearing registration No. CG-04J/8795 by non-applicant No 1- Raju Vishwakarma. The offending vehicle owned by respondent No. 2-Nitesh Kesharwani and insured by respondent No. 3- the New India Insurance Company Ltd.

03. 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.

04. It is submitted by learned counsel for both the parties that no counter appeal has been filed by the respondents.

05. Learned counsel for the appellants/claimants submits that the deceased was earning Rs.9,000/- per month but the Tribunal wrongly considered Rs. 3,000/- per month. He further submits that no amount towards future prospect has been granted to the claimants and 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.***

06. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that as per the statement of non applicant witness No. 3- Gautam Lamba he stated that the payment certificate Ex. P/10 was issued by him but he can not say in which month the payment as mention in the Ex. P/11 was paid to the deceased, therefore, the learned Tribunal rightly considered 3,000/- as notional income of the deceased and has rightly awarded compensation which needs no interference by this Court. Learned counsel for the Insurance Company further submits that there is no any established income was proved by the claimant therefore, future prospect can not be considered.

7. Heard learned counsel for the parties and perused the material available on record and the award impugned.

8. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.9,000/- per month as mason (doing the work of laying the titles) but no authentic document 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. 5,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased as per PM report Ex. P/5, rightly considered by the Tribunal as 35 years, the dependency, the nature of his job and keeping in view of 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. 5,000/- per month.	60,000/- per annum
02.	40% of (i) above to be added towards future prospects.	60,000+24,000 =Rs.84,000/-
03.	1/4rd deduction towards personal and living expenses of the deceased	Rs. 84,0000-21,000= Rs. 63,000/-
04.	Multiplier of 16 to be applied	Rs. 63,000x16 = Rs.10,08000/-
05.	Towards loss of estate and funeral expenses & parental consortium	Rs. 15,000+15,000+ 40,000+ 30,000/-= Rs. 1,00,000/-
	Total compensation	**Rs. 11,08,000/-**

Since the Tribunal has already awarded Rs.4,52,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.6,56,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact. It is directed that the Insurance Company shall pay the amount of compensation to the claimants along with interest within a period of two months from the order.

9. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya)

Judge