

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1606 of 2016**

1. Smt. Khelmati Bai, aged about 45 years, W/o- Late. Nandlal Panika,
2. Tiharulal Panika, aged about 25 years, S/o- Late. Nandlal Panika R/o- Village- Kongsara, P.S. & Tehsil- Kota, District- Bilaspur, (C.G.).

---- Appellants/Claimants**Versus**

1. Krishna Lal Yadav, S/o -Kosharam Yadav, R/o- Navgawan, P.O.- Shivrichandas, P.S.- Rajendragram, Distt.- Anuppur, (MP)

(Picup Vehicle No.- M.P.-18H/1699, The then Driver)
2. Jagdish Prasad Gupta, S/o- Jageshwar Prasad Gupta, R/o- Village- Basniha, P.S- Rajendragram, Tehsil- Rajendragram, distt- Anuppur, (MP)

(Picup Vehicle No.- M.P.-18-H-1699, The then Registered owner)
3. The New India Insurance Company Ltd., Through Regional Manager, Regional Office, Rama Trade Centre, First Floor, Near Old Bus Stand, Bilaspur, Tehsil & Distt.-Bilaspur (C.G.).

---- Respondents

For Appellants : Shri Pushkar Sinha, Advocate.
For Respondent No. 3 : Shri Samir Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****15.02. 2019**

1. This appeal is by the claimants against the award 29.09.2016 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur, Distt.- Bilaspur (C.G.) in Claim Case No. 639/2014 awarding total

compensation of 2,84,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No. 3.

02. As per claim petition, on 28.11.2013, deceased Nandu @ Nandlal, aged about 52 years, earning Rs.60,000/- to Rs. 80,000/- per annum as agriculturist and labour, the deceased was coming to village Matikachar with his friend on motorcycle as pillion rider died in the motor vehicle accident caused due to rash and negligent driving of offending vehicle bearing registration No. MP18-H/1699 by non-applicant No-1 Krishna Yadav.

03. On claim petition being filed by the claimants/wife & son of the deceased 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 respondent.

05. Learned counsel for the appellants/claimants submits that the deceased was earning Rs.60,000/- to Rs. 80,000/- per annum as agriculturist and labour 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.

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.***

06. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and 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 Rs.60,000/- to Rs. 80,000/- per annum as agriculturist and labour 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 i.e. 52 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*, (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.	10% of (i) above to be added towards future prospects.	60,000+6,000 =Rs.66,000/-
03.	1/3rd deduction towards personal and living expenses of the deceased	Rs. 66,000-22,000= Rs. 44,000/-
04.	Multiplier of 11 to be applied	Rs. 44,000x11 = Rs.4,84,000/-
05.	Towards loss of estate and funeral expenses & spousal consortium	Rs. 15,000+15,000+ 40,000/-= Rs. 70,000/-
	Total compensation	Rs. 5,54,000/-

Since the Tribunal has already awarded Rs.2,84,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,70,000/- 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