AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 650 of 2014

1. Smt. Bela Sahu (Chaudhari), W/o Late Vijay Kumar Sahu (Chaudhari), aged about 33 years,

2. Kumari Astha Sahu (Chaudhari), D/o Vijay Kumar Sahu (Chaudhari), aged about 11 years

3. Sanskar Sahu (Chaudhari), S/o Vijay Kumar Sahu (Chaudhari), aged about 7 years,

4. Ramsingh Chaudhari, S/o Late Fandi Singh, aged about 71 years,

Appellant No. 2 and 3 through their natural guardian mother Smt. Bela Sahu (Chaudhari), W/o late Vijay Kumara Sahu (Chaudhari) aged about 33 years

All are resident of Borsi Road, Kanhaiyapuri, Kasaridih, Chaoki-Padamanabhapur, Durg, Tahsil and District- Durg, C.G. (All claimants)

---- Appellants/Claimants

Versus

1. Nalla Bothu Prasad, S/o Ramayya, aged about 40 years, R/o S.C Madiga Upaluru, Village Pennaluru Mandal (Police Station Kankipadu) District Krishna, Andhra Pradesh)(Driver of Truck No. A.P./16/T.B/2457)

2. S.V.N Kishor, S/o S. Satyanarayan, aged about 45 years R/o Upaluru, District- Krishna Kankipadu, Andhra Pradesh (owner of Truck No. A.P/16/T.B/2457)

3. Chola Mandalam M.S General Insurance Company Limited, through claim Manager- Shriram Height Building, Gandhi Chowk, Shankar Nagar Road, in front of Gandhi Udhayan, near Sahid Bhagat Singh Chowk, G.E. Road, Raipur, C.G. (Insurance)

---- Respondents

For Appellants :Shri P. Dhurandhar, Advocate.
For Respondent No.3 :Shri Abhishek Sinha, Advocate alongwith Shri D. L. Dewangan, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

24.04.2019

Heard on application dated 25.06.2014 for condonation of delay of 169 days in filing the MAC.

2. For the reason mentioned in the application, which is duly supported by the affidavit, the same is allowed and delay in filing the MAC is condoned.

3. Heard on admission.

4. Admit.

5. With the consent of both the parties, the appeal is heard finally.

6. This appeal is by the claimants against the award dated 23.09.2013, passed by 5th Additional Motor Accident Claims Tribunal, Durg (C.G.) in Claim Case No.149/2011 awarding total compensation of 45,49,940/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

7. As per claim petition, on 31.07.2011, deceased -Vijay Kumar Sahu, aged about 44 years, earning Rs. 34,568/- pm as Assistant Manager at Aandhra Bank Raipur Branch, died in the motor vehicle accident caused due to rash and negligent driving of vehicle (truck) bearing registration No. CG A. P.16-TB/2457 by non-applicant No.1- Nall Bothu Prasad. The offending vehicle is owned by non-applicant No. 2 & insured by non-applicant No. 3.

8. On claim petition being filed by the claimants/ wife, children and father of the deceased- Vijay Kumar Sahu under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

9. Learned counsel for the appellants/claimants submits that as per

salary certificate (Ex. P/1) the deceased was earning Rs. 34, 568/- pm and that certificate is proved by the applicant witness No. 1 V. Krishna Mohan and that document is uncontroverted and unchallenged by the respondent/Insurance Company. Therefore, learned Tribunal wrongly considered the salary on the basis of Ex. P/10 which is a salary slip of month of June, 2011 whereas the accident occurred on 31.07.2011, therefore, last pay of the deceased should be considered as per Ex. P/1 instead of Ex. P/10. Learned Tribunal has also wrongly made deduction of income tax. He further submits that the amount considered towards the future prospect is not in accordance with law and no amount awarded towards loss of filial and other consortium has been allowed.

In support of above contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** **Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram & Ors. In civil appeal No. 9581 of 2018 arising out of SLP[Civil] No. 3192 of 2018.**

10. On the other hand, learned counsel for the respondent/insurance company supports the impugned award he submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

12. Admittedly, in this case the accident occurred on 31.07.2011 in which deceased died. As per Ex. P/1 i.e. the salary slip for the month of July, 2011 the income of the deceased was Rs. 34, 568/- pm. As per statement of V. Krishna Mohan (AW-01) he stated that the deceased was working as Assistant Manager I at Andhar Bank, Shankar Nagar, Raipur and earning Rs. Rs. 34, 568/- pm vide Ex. P/1. Thus, Ex.P/1 is duly proved by V. Krishna Mohan (AW-01). In view of this, the Tribunal was not justified in assessing the income of the deceased as Rs.

21451/-pm on the basis of Ex. P/10 i.e. salary certificate in the month of June. Further looking to the age of the deceased i.e. 44 years and being a permanent salary paid employee, 30% future prospect would be added to the income of the deceased. After calculating the said future prospect the income of the deceased would be taken as Rs. 5,39,261/-. So far as income tax deduction is concerned, the income tax slab is prescribed as under:

Income Tax Rates/Slabs for A.Y. (2011-2012)

Men aged 65 years and less

Slab (Rs.)	**Tax (Rs.)**
Less than 1,60,000	Nil
160,000 to 5,00000/-	(TI-1,60,000)* 10%
5,00000 to 8,00000/-	34,000+(TI-5,0000)* 20%
Greater than 8,00000/-	94,000+ (TI-5,00000)* 30%

13. For deduction of income tax from the income of the deceased considered as Rs. 5,39,261/- pa as per income tax slab for income from 1,60,0000 to 5,00000/- 10% payable and as such it comes to Rs. 34,000/-. For 5,00000 to 8,00000/-20% payable and as such it comes to Rs. 7,852/- (in round figure). Education Cess has to be added on income tax i.e. 3% (Rs. 1256/-) from A.Y. 2007-08. The total tax comes to Rs. 43,108/-. After deducting the said tax amount from the income of the deceased i.e. 5,39,261/- the amount comes to Rs. 4,96,153/-. However, in these circumstances, after calculating future prospect and after deduction of income tax, Rs. 4,96,153/- per year can safely be taken as the income of the deceased at the relevant time. In the light of Supreme Court judgment **Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram & Ors. (supra),** towards consortium as Rs. 1,00000/- by the Tribunal is kept intact. Further, considering the age of the deceased i.e. 44 years and the decision of the Hon'ble Supreme Court in ***Pranay Sethi, Sarla Verma (Smt)*** (supra), the claimants are

held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	After calculating future prospect and after deduction of income tax the income of the deceased per annum	Rs. 4,96,153/- P.A.
02.	After 1/4th deduction towards personal and living expenses of the deceased	Rs. Rs. 4,96,153-124039= Rs. 3,72115/-
03.	Multiplier of 14 to be applied	Rs. 5209610/-
04.	Towards loss of Estate, funeral expenses, & spousal consortium	Rs. 70,000/-
05.	Towards parental consortium	1,00,000/- (as awarded by the Tribunal)
06.	**Total Compensation**	**Rs. 53,79610/-**

Since the Tribunal has already awarded Rs. 45,49,940//-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 8,29,670/-with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/-

(Gautam Chourdiya)

Judge

amtita