

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 100 of 2019**

1. Smt. Kamleshwari Yadu Wd/o Late Rohit Kumar Yadu Aged About 25 Years
2. Yug Yadu S/o Late Rohit Kumar Yadu Aged About 09 Month (Minor)
3. Paharu Ram Yadu S/o Mahettar Yadu Aged About 52 Years
4. Dulaurin Bai W/o Paharuram Yadu Aged About 50 Years Appellnat NO.02 Minor through the mother nautral guardian appellant no.01 Smt. Kamleshwari yadu Wd/o Late Rohit Kumar Yadu, aged about 25 years, All R/o Village Gondali, Post Office- Sutiurkuli, Polie Station And Tahsil Bilaigarh, District Revenue And Civil- Balodabazar-Bhatapara, Chhattisgarh.

----Appellants**Versus**

1. Md. Vasim Ansari S/o Ishaq Ansari Aged About 25 Years R/o Village Gurdi Police Station And Disrtict- Gadwa (Jharkhand) At Present- Transport Nagar, Bilaspur- District- Bilaspur, Chhattisgarh. (Driver Of Vehicle Trailer No. CG10 /AF/2613)
2. Baljeet Singh S/o Late Wariyam Singh Domir Aged About 43 Years R/o A.I.G. 35, Arya Colony Tifra, Bilaspur, District- Bilaspur, Chhattisgrh. (Owner Of Vehicle Trailer No. CG10/AF/2613)
3. The New India Insurance Company Limited Branch Office- Upper Floor Of Union Bank, Ambedkar Chowk, Baloda Bazar- District (Revenue And Civil)- Balodabazar- Bhatapara, Chhattisgarh. (Insurer of Vehicle Trailer No. CG10/AF/2613)

---- Respondents

For Appellants	Shri Anand Kesharwani, Advocate.
For Respondent No.3	Shri Anil Gulati, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

20/02/2019

This appeal is by the claimants against the award dated 06.10.2018 passed by Motor Accident Claims Tribunal, Balodabazar,

C.G. in Claim Case No.22/18 awarding total compensation of Rs.09,66,400/- with interest @ 9% per annum from the date of application till realization, fastening liability on the Insurance Company.

02. Respondent No.3/Insurance Company has filed cross objection under Order 41 Rule 22 of CPC seeking reduction of compensation.

03. As per claim petition, on 04.10.2017, deceased Rohit Kumar Yadu, aged about 26 years years, earning Rs.10,500/- per month as Supervisor in Brick Field, died in the motor vehicular accident caused due to rash and negligent driving of Trailer bearing no.CG10-AF-2613 by non-applicant No.1/respondent no.1. At the time of accident, offending vehicle was owned by non-applicant no.2/respondent no.2 and insured with non-applicant no.3/respondent no.3.

04. On claim petition being filed by the claimants i.e. wife, children and parents of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.23,51,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

05. 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.4,000/- per month whereas it should have been Rs.10,500/- per month looking to the job of the deceased.
- (ii) that no amount towards future prospect has been granted to the claimants.

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 has filed cross objection in this appeal and submits that father of the deceased was not dependent upon the deceased, therefore, 1/3 deduction is required as per Sarla Verma (supra) but learned Tribunal deducted ¼ towards personal and living expenses of the deceased. He also submits that the amount awarded by the Tribunal under conventional heads is on higher side which needs to be reduced suitably.

07. Heard both the parties on appeal as well as on cross objection and perused the impugned award.

08. The only issue to be considered by this Court in the appeal filed by the claimants as well as the cross objection filed by the Insurance Company, as the quantum of compensation assessed by the Tribunal.

09. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.10,500/- per month as Supervisor in Brick Field 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.8,000/- per month as per minimum wages at the relevant time of the unskilled labour. Further, considering the age of the deceased i.e. 35, the dependency, the nature of his job and the

decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi* (supra) & ***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***, the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.8,000/- per month.	Rs.96,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs.38,400/- Rs.96,000 + Rs.38,400 = Rs.1,34,400/-
03.	1/4 deduction towards personal and living expenses of the deceased	Rs.33,600/- Rs.1,34,400 – Rs.33,600 = Rs.1,00,800/-
04.	Multiplier of 16 to be applied	Rs.16,12,800/-
05.	Towards loss of spousal consortium	Rs.40,000/-
06.	Towards loss of parental consortium to claimant no.2	Rs.15,000/-
07.	Towards loss of filial consortium to claimants nos. 3 & 4 @ Rs.15,000/- each	Rs.30,000/-
08.	Towards loss of estate	Rs.15,000/-
09.	Towards loss of funeral	Rs.15,000/-
	Total Compensation	Rs.17,27,800/-

Since the Tribunal has already awarded Rs.9,66,400/-, after deducting the same from the above amount, the claimants are held

entitled for additional compensation of Rs.7,61,400/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. In the result, the appeal as well as cross objection stand allowed in part with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh