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HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (Civil) No. 320 of 2015**

1. Smt. Prem Kumari W/o Late Dwarika Prasad Khande, aged about 40 years
2. Ku. Ram Dulari D/o Late Dwarika Prasad Khande, aged about 14 years
3. Phulesh Kumar @ Chotu, S/o Late Dwarika Prasad Khande, aged about 12 years
4. Nilesh Kumar S/o Late Dwarika Prasad Khande, aged about 10 years
Appellant No. 2 to 4 are Minor through Natural guardian mother appellant No.1 Smt. Prem Kumari W/o Late Dwarika Prasad Khande, aged about 40 years
5. Smt. Balmati W/o Late Dhirsai Khande, aged about 60 years
All R/o Village Pendri, P.S. and Tehsil Masouri, District Bilaspur (C.G.)

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

1. Mathura Das S/o Premdas Manikpuri, Aged about 32 years, R/o Village Jamdi, P.S. Jajaipur, District Janjgir-Champa (C.G.)
(Driver of Bus bearing No. C.G.-10/G-0823)
2. Mohd. Harun S/o Wali Mohammad Qureshi, Aged about 40 years, R/o Village Darrighat, P.S. and Tehsil Masturi, District Bilaspur (C.G.)
(Owner of Bus bearing No. C.G.-10/G-0823)
3. The Branch Manager, Oriental Insurance Company Limited, Branch Office 1st Floor, Rama Trade Center, Opposite to Rajiv Plaza, Bus Stand Road, Bilaspur (C.G.)
4. Prem Prakash Lat S/o Late H.S. Lat, R/o Nirala Nagar, Old Bus Stand, Tahsil and District Bilaspur

---- Respondents/Non-applicants**And****Miscellaneous Appeal (Civil) No. 68 of 2015**

- The Branch Manager, Oriental Insurance Company Ltd., Branch Office First Floor Rama Trade Center, Opposite Rajeev Plaza Bus Stand Road Bilaspur (C.G.)

---- Appellant/Insurer/Non-applicant No.3**Versus**

1. Smt. Prem Kumari W/o Dwarika Prasad Khande, Age 40 years
2. Ku. Ram Dulari D/o Dwarika Prasad Khande, Age 14 years
3. Phulesh Kumar @ Chotu S/o Dwarika Prasad Khande, Age 12 years
4. Nilesh Kumar S/o Dwarika Prasad Khande, Age 10 years
Respondent no. 2 to 4 are minor they are through their natural guardian

mother Smt. Prem Kumari

5. Smt. Balmati W/o Dhirsai Khande, Age 60 years

Respondent no. 1 to 5 are R/o Village Pendri, P.S. and Tehsil Masturi, District Bilaspur C.G.

6. Mathura Das S/o Premdas Manikpuri, Age 32 years, R/o Village Jamdi, P.S. Jaijaipur, District Janjgir-Champa

(Driver/Non-applicant No.1)

7. Mohd. Harun S/o Wali Mohammad Qureshi, Age 40 years, R/o Village Darrighat, P.S. and Tehsil Masturi, District Bilaspur C.G.

(Owner/Non-applicant No.2)

---- Respondents

For Claimants	:	Shri Rajesh Jain, Advocate
For Non-applicants No. 1, 2 & 4	:	None
For Non-applicant No. 3/ Insurance Company	:	Shri Ghanshyam Patel, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

15.03.2019

1. As both above appeals arise out of the same accident occurred on 20.12.2011 involving the vehicle Bus bearing registration No. CG-10/G/0823 (hereinafter referred to as the 'offending vehicle'), they are being disposed of by this common judgment.

2. M.A.(C) No. 320 of 2015 has been filed by the Claimants seeking enhancement of compensation. M.A.(C) No. 68 of 2015 has been filed by the Insurance Company/non-applicant No.3 challenging the quantum of compensation. Both appeals arise out of common award dated 13.10.2014 passed by the Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No. 39 of 2013 awarding compensation in favour of the Claimants of Rs.6,65,538/- with interest @ 6% per annum from the date of claim application till realization, fastening liability upon non-applicant No. 3/Insurance Company alongwith non-applicants No. 1 & 2/driver & owner jointly and severally to pay compensation to the Claimants.

3. Brief facts of the case are that the Claimants are wife, children & mother of

deceased- Dwarika Prasad Khande. On the date of accident i.e. on 20.12.2011 Dwarika Prasad Khande was going to Village Khauroda by his motorcycle bearing registration No. CG-10/EEL/8756. When he reached the betel shop at Khauroda, non-applicant No. 1, driver of the offending vehicle Bus bearing registration No. CG-10/G/0823, owned by non-applicant No.2 and insured with non-applicant No.3, driving the said Bus in a rash and negligent manner, dashed the motorcycle of Dwarika Parasad from the back side. As a result thereof, Dwarika Prasad Khande sustained grievous injuries and he died on spot.

4. Learned counsel for the Claimants submits that at the time of accident, deceased Dwarika Parasad Khande was working as labour as well as was doing the business of fisheries by taking a pond on lease. He further submits that by Notification No.8041/67/Fin.-4/2013 dated 17/10/2013 issued by the Collector, the Tribunal has considered the income of the deceased as Rs.5,163/- per month as per minimum wages whereas it should have been Rs.10,000/- per month. He also 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 consortium and parental consortium 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*** and ***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. Learned counsel for the Insurance Company/non-applicant No.3 submits that the Tribunal has committed a material illegality in computing the income of the deceased at the rate notified by the Collector vide notification dated 17.10.2013, whereas, the death had taken place on 20.12.2011 and on that date, the Collector rate of 2013 was not applicable, therefore, the income of the deceased as

Rs.5,163/- per month considered by the Tribunal being on the higher side deserves to be reduced suitably.

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

7. It is not disputed by the parties that the accident occurred on 20.12.2011 and as per notification dated 17.10.2013 issued by the Collector, the Tribunal has considered the income of the deceased as Rs.5,163/- per month.

8. Smt. Premkumari Khande, wife of the deceased, admitted this fact that at the time of accident, her husband was working as labour and he was approximately earning Rs.100-150/- per day and was also earning money by doing the business fisheries, but no document has been produced to prove that the pond was taken by him on lease for doing business of fisheries. Looking to the job of deceased as labour and the fact that the accident happened on 20.12.2011, as per Schedule "A" of Labour Commissioner & Competent Authority, Minimum Wages Act, 1948, Chhattisgarh, Raipur, the income of unskilled person was Rs.4,277/- per month at the relevant time. According to the notification dated 17.10.2013 issued by the Collector mentioned in para-18 of the impugned award, the Tribunal has considered the income of the deceased as Rs.5,163/- per month and copy of that notification also enclosed with the record which is applicable from 01st of March, 2013. In the present case, the accident occurred on 20.12.2011 and the notification dated 17.10.2013 issued by the Collector came into the force w.e.f. 01.03.2013. No documentary evidence in support of income of the deceased has been adduced by the Claimants. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as 4,300/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. in between 41-45 years, the dependency, the nature of his job and the decisions of Hon'ble Supreme Court in *Pranay Sethi*; *Smt. Sarla Verma* and *Magma General Insurance Co. Ltd.* (supra), the Claimants are held entitled to compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.4,300/- per month	Rs.51,600/- per annum
2.	25% towards future prospects added to annual income	(Rs.51,600/- + Rs.12,900/-) Rs.64,500/-
3.	1/4th deduction towards personal and living expenses of the deceased	(Rs.64,500/- – Rs.16,125/-) Rs.48,375/-
4.	Multiplier of 14 applied	Rs.48,375/- x 14= Rs.6,77,250/-
5.	<u>Conventional Heads:</u> Loss of spousal consortium, loss of estate & funeral expenses	Rs.70,000/-
6.	Towards loss of parental consortium @ Rs.20,000/- to Claimants No. 2, 3 & 4	Rs.60,000/-
7.	Towards loss of filial consortium to Claimant No.5	Rs.10,000/-
	Total Compensation	Rs.8,17,250/-

Since the Tribunal has already awarded Rs.6,65,538/-, after deducting the same from the above amount, the Claimants are held entitled for additional compensation of Rs.1,51,712/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

9. In the result, the appeal i.e. M.A.(C) No. 320 of 2015 filed by the Claimants is allowed in part with modification in the impugned award to the above extent and the appeal i.e. M.A.(C) No. 68 of 2015 filed by the Insurance Company/non-applicant No.3 stands disposed of.

10. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge