

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 757 of 2015**

1. Smt. Radha Bai, W/o Late Awadhram Chauhan, aged about 45 years,
2. Sunil Kumar, S/o Late Awadhram Chauhan, aged about 22 years, Both are R/o Indira Colony, Gopalpur, Chaitma, Pali, Distt.- Korba (C.G.)
3. Smt. Karonda Bai, W/o Pyarelal Chauhan, aged about 27 years, R/o Gondartarai, Katghora, Distt.- Korba (C.G.).
4. Smt. Kiran Bai, W/o Dallusai Chauhan, aged about 25 years,

R/o. Chakadhamna, Near Chakabuda, Dipka, Tahsil- Katghora, Distt.- Korba (C.G.).

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

1. Jugesh Kumar Lohar S/o Baishakhu Ram Lohar, aged about 20 years,
2. Satyanarayan S/o. Aanandram, aged about 30 years,

Both are R/o Banchar, Thana- Katghora, Distt.- Korba (C.G.).
3. United India Insurance Co. Ltd., Through- Branch Manager, Office- R.B. Trader, T.P. Nagar, Korba Distt.- Korba (C.G.).

---- Respondents

For Appellants	:	Shri Samir Singh, Advocate.
For Respondent No. 1 & 2	:	None
For Respondent No.3	:	Shri Dashrath Gupta, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****26.02. 2019**

This appeal is by the claimants against the award dated 17.04.2015, passed by Additional Motor Accident Claims Tribunal,

Katghora in Claim Case No.61/2014 awarding total compensation of Rs. 2,64,000/- with interest @ 6% per annum from the date of application till realization, fastening liability upon the non-applicant Nos. 1 & 2 jointly and severally.

02. As per claim petition, on 11.01.2014 deceased Awadhram Chauhan, aged about 48 years, earning Rs.7,500/- per month as mason, died in the motor vehicular accident caused due to rash and negligent driving of vehicle bearing registration No. C.G. 12 A.B./1652 by non-applicant No.1. The vehicle is owned by non-applicant No. 2 and insured with non-applicant No. 3.

03. On claim petition being filed by the claimants/wife, children of the deceased- Awadhram Chauhan 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. Learned counsel for the claimants submits as under:

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- whereas it should have been Rs.7,500/- as per minimum wages prevailing at the relevant time.

(ii) that 1/2nd deduction towards personal and living is also against the law and it should have been 1/3rd.

(iii) that no amount towards future prospect has been granted to the claimants.

(v) that 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.***

05. Learned counsel for the claimants further submits that till now no amount of compensation is received by the claimants, therefore he prays for order of pay & recover in this case in the event the Insurance Company is exonerated of its liability. Reliance has been placed on the decision of Hon'ble Supreme Court In the matter of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796.***

06. On the other hand, learned counsel for the respondent/Insurance Company supports the impugned award and submits that at the time of the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

08. As regards income of the deceased, though the claimants have pleaded that the deceased- Awadh Chauhan aged about 48 years was earning Rs.7,500/- per month as mason but no documentary or oral 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.5,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 48 years, the dependency, the nature of his job and 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.	Rs. 5,000x12= Rs. 60,000/- per annum
02.	25% of (1) above to be added towards	Rs. 60,000+15,000=

	future prospects.	Rs. 75,000/-
03.	1/3rd deduction towards personal and living expenses of the deceased	Rs. 75,000-25,000= Rs. 50,000/-
04.	Multiplier of 13 to be applied	Rs. 6,50,000/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06.	Total compensation	Rs. 7,20,000/-

Since the Tribunal has already awarded Rs.2,64,000, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,56,000/-with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

09. However, considering the facts & circumstances of the case, the fact that on the date of accident, the vehicle in question was duly insured with non-applicant No. 3 keeping in view of the Hon'ble Court decision in the matter of ***Manuara Khatun(supra)*** Insurance Company is directed to first pay the entire amount of compensation to the claimants and then recover the same from Non-applicant Nos. 1 & 2 in accordance with law.

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

Sd/-

(Gautam Chourdiya)
Judge