

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 1098 of 2014**Judgment reserved on : 23.01.2019Judgment delivered on : 08.02.2019

1. Smt. Teej Bai Wd/o Late Gajratan, aged about 53 years.
2. Kumari Sukrawara D/o Late Gajratan, aged about 18 years.

Both R/o village Pachri, Tahsil Pamgarh, District - Janjgir-Champa (C.G.), at present R/o Kosabadi Korba, Tahsil and District - Korba (C.G.)

**---- Appellants****Versus**

1. Smt. Anim Khatma Wd/o Late Kaimuddin, aged about 40 years, R/o Maitholi, Raniganj, District - Pratapgarh (U.P.)  
At present R/o Rajeev Gandhi Chowk, Bilaspur (C.G.)  
(The respondent No.1 is substituted in place of driver of the offending vehicle namely Kaimuddin due to death of Kaimuddin)
2. Mustak Ahmad S/o Shri Rafiq Ahmad, aged about 52 years, R/o Rajeev Gandhi Chowk, Bilaspur (C.G.)  
(Owner of offending vehicle)
3. I.C.I.C.I. Lombard, General Insurance Company Limited, through Branch Manager, I.C.I.C.I. Lombard, General Insurance Company Limited, Branch Officer Lal Ganga Shopping Mall No.304 - 306, 3<sup>rd</sup> floor, G.E. Road Raipur, District - Raipur (C.G.)  
(Insurer of the offending vehicle)

**---- Respondents**


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|-----------------------|---|------------------------------------|
| For Appellants        | : | Shri Hemant Kumar Patel, Advocate. |
| For Respondents 1 & 2 | : | None.                              |
| For Respondent No.3   | : | Shri Amrito Das, Advocate          |

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**Hon'ble Smt Justice Rajani Dubey**

**C A V Order****/02/2019**

1. This appeal arises out of the award dated 08.08.2014 passed by Motor Accident Claims Tribunal, Korba (for short the "Tribunal"), in Claim Case No.31/2010 awarding a compensation of Rs.2,12,000/- in favour of the appellants/claimants for the death of Gajataran.

2. Facts of the case in brief are that on 15.12.2009, Gajataran was coming to his house on bicycle after disposing his work. At about 4.30 PM when he reached near Akaltara turn Chandipara Pamgarh, a vehicle bearing registration No.CG-10-A-2233 driven by Kaimuddin, respondent No.1, (The respondent No.1 is substituted in place of driver of the offending vehicle namely Kaimuddin due to his death) herein in a rash and negligent manner and dashed his bicycle, as a result of which Gajataran sustained grievous injuries and while he was taking to hospital, he succumbed to his injuries. A claim petition was filed by the appellants/claimants who happen to be the legal heirs (Wife and Daughter) of the deceased claiming a compensation of Rs.24,00,000/- *inter alia* pleading that the deceased at the relevant time was aged about 55 years, he was working as Carpenter in the shop of Jyotish Ram Jangde Furniture Mart, Chandipara, Pamgarh and earning Rs.7,500/- per month.

3. Pleading of the claimants have, however, been denied by

the respondent/insurance company.

4. After evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs.2,12,000/- along with interest @ 8% per annum in favour of the appellants/claimants taking the monthly income of the deceased as Rs.3,000/- per month and Rs.36,000/- per annum, applying the multiplier of 8 and deducting 1/3rd i.e. Rs.12,000/- towards his personal expenses. Hence, this appeal for enhancement.

5. Counsel for the appellants/claimants submits that the Tribunal has erred in law in not awarding adequate compensation to the claimants. He also submits that the annual income of the deceased at Rs.36,000/- has not been properly assessed by the Tribunal. Learned counsel for the appellants also argued that the claims Tribunal has also failed in not taking future prospect as per the ratio laid down in the case of **Santosh Devi v. National Insurance Co. Ltd<sup>1</sup>**. It has been also submitted that the amount awarded under the conventional heads is also on the lower side and deserves to be enhanced suitably.

6. On the other hand, counsel for the respondent/insurance company supports the award impugned.

7. Heard counsel for the parties and perused the documents on record.

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1 2012 (6) SCC 421

8. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

9. Now this Court shall examine as to whether the compensation of Rs.2,12,000/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

10. True, the claimants/appellants pleaded that deceased used to earn Rs.7,500/- per month by working as Carpenter in the furniture shop of Jyotish Ram Jangde, no cogent and reliable evidence was led before the Tribunal to establish the income of the deceased to the extent of Rs.7,500/- per month. Record reveals that a letter pad of the employer was produced before the Tribunal mentioning therein that the deceased was earning Rs.250/- per day and Rs.7,500/- per month, but the employer has not been examined to substantiate this plea of the claimants that the deceased was earning Rs.7,500/- per month. Therefore, this Court do not find any fault in the approach of the Tribunal in discarding the appellants' evidence about the income of the deceased. Nevertheless, the income of the deceased assessed by the Tribunal at Rs.3,000/- per month and Rs.36,000/- per annum in the year 2009 is certainly on the lower side considering the fact that deceased

was a skilled carpenter.

11. Considering that deceased Gajaratan, on the date of accident, was aged about 60 years and at the time of incident he was a skilled carpenter in the Furniture Mart of Jyotish Ram Jangde, this Court is of the opinion that he could have easily earned Rs.4,000/- per month in the year 2009. This Court, therefore, propose to recompute the compensation taking the monthly income of the deceased at Rs.4,000/- per month and Rs.48,000/- per annum. The deceased was married and 60 years of old at the time of accident. Hence, future prospect at 10% of the actual income of the deceased is required to be taken, thus, the amount comes to Rs.4,800/- (10% of Rs.48,000/-). Further, there being two claimants, the deduction of 1/3rd towards personal expenses of the deceased from his annual income would be just and proper. Accordingly, by deducting 1/3rd from the annual income of the deceased, the claimants' dependency is assessed at Rs.35,200/- per annum.

12. Looking to the age 60 years of the deceased and two claimants/appellants, at the time of accident, this Court of the opinion that the Tribunal has not rightly applied the multiplier in this case. In fact, for the age group of 59-60 years, multiplier of 9 has to be applied and not 8 as per the Schedule. Therefore, the multiplier is taken as 9 and compensation is assessed to  $\text{Rs.35,200/-} \times 9 = \text{Rs.3,16,800/-}$ .

That apart, the Tribunal has awarded Rs.5,000/-, Rs.10,000/- and Rs.5,000/- under the head funeral expenses, loss of consortium and loss of estate respectively, which in the facts and circumstances of the present case and in view of the judgment of Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi**<sup>2</sup>, is inadequate. The Supreme Court in the matter of **National Insurance (Supra)** dealt with the various heads under which adequate compensation is to be awarded in a death case. Thus, keeping in view all these things, above discussion and in view of decisions of Hon'ble Supreme Court in the matter of **Santosh** and **National Insurance (supra)**, this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The claimants/appellants are entitled for compensation in the following manner:-

| Head                                                    | Compensation awarded                            |
|---------------------------------------------------------|-------------------------------------------------|
| Income                                                  | Rs.4,000/-                                      |
| Future Prospect                                         | Rs.400/- (i.e. 10% of the income)               |
| Deduction towards living and personal expenses          | Rs.1467/- (i.e. 1/3rd of Rs.4,000/- + Rs.400/-) |
| Total Income                                            | Rs.2,933/- (Rs.4,400 - Rs.1,467)                |
| Yearly Income                                           | Rs.35,196/- (Rs.2,933/- x 12)                   |
| Multiplier applied                                      | 9                                               |
| Loss of future income                                   | Rs.3,16,764/- (Rs.2,933/- x 12 x 9)             |
| Loss of Estate, Loss of Consortium and Funeral Expenses | Rs.70,000/-                                     |
| <b>Total compensation awarded</b>                       | <b>Rs.3,86,764/-</b>                            |

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<sup>2</sup> (2017) 16 SCC 680

13. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.3,86,764/- (3,16,764/- + 70,000/-) rounded off Rs. 3,86,800/- for which the claimants are entitled to receive as compensation for the death of deceased Gajaratan. Since the Tribunal has already awarded Rs.2,12,000/-, after deducting the same the claimants/appellants are entitled for enhanced amount of Rs.1,74,800/-. This additional amount of compensation shall carry interest @ 8% p.a. from the date of filing of claim application till realization. The amount received by the claimants, if any, shall be adjusted in the enhanced sum.

14. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/-

**(Rajani Dubey)**  
**Judge**