

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 418 of 2013**

1. Smt. Dukala Bai Wd/o Late Chhanu Sahu, Aged About 40 Years
2. Omkar Sahu S/o Late Chhanu Sahu Aged About 22 Years
3. Smt. Kunti Bai D/o Late Chhanu Sahu Aged About 20 Years
4. Satish Kumar Sahu S/o Late Chhanu Sahu Aged About 14 Years

Appellant no.4 minor, through- natural guardian and mother Smt. Dukala Bai, Wd/o Late Channu Sahu, All R/o village Nawagaon, Post-Duddera, P.S. Arjunda, Tah. Gunderdhayi, Distt. Durg C.G.

----Appellants

Versus

1. Vishnu Lal Sahu S/o Suklal Sahu Aged About 30 Years R/o Joratarai, Post- Mangata, P.S. Somni, Distt. Rajnandgaon C.G.
2. Kali Ram Sahu S/o Bainlal Sahu Aged About 35 Years R/o Village And Post- Hirri, Tah. Dhamdha, Distt. Durg C.G.
3. Branch Manager, United India Insurance Company Ltd., Paras Complex, Behind S.B.I., Gurudwara Station Road, Distt. Durg C.G.

---- Respondents

For Appellants	Shri S.S. Painkara, Advocate on behalf of Shri A.K. Prasad, Advocate.
For Respondent No.3	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

01/04/2019

This appeal is by the claimants against the award dated 12.12.2012 passed by 2nd Additional Motor Accident Claims Tribunal, Durg, C.G. in Claim Case No.191/2011 awarding total compensation of Rs.2,80,000/- with interest @ 6% per annum from the date of

application till realization, after deducting 50% contributory negligence on the part of the deceased fastening liability on the non-applicants jointly and severally.

02. As per averments made in the claim petition, on the date of accident i.e. 04.05.2011, deceased Chhannu Lal Sahu, aged about 45 years, earning Rs.15,000/- per month as Mason and Cook, was going to village Nawagaon by riding the motorcycle Hero Honda bearing no. CG07-K-3059. However, on the way non-applicant no.1 riding the motorcycle Hero Honda Splendor bearing no.CG07-LR-5866 in a rash and negligent manner dashed the motorcycle of the deceased, as a result of which deceased suffered grievous injuries and died on the spot itself. At the time of accident, the offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

03. On claim petition being filed by the claimants i.e. wife and children under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.28,65,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellants/claimants submits as under:

(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.15,000/- per month.

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

(iii) that the Tribunal has wrongly considered 50% contributory negligence on the part of the deceased.

(iv) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

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

06. No counter appeal has been filed by the respondents as submitted by both the parties.

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

08. So far as contributory negligence on the part of the deceased is concerned, considering the manner in which the accident occurred i.e. head on collision between two motorcycles, the Tribunal considered the deceased equally responsible for the accident. The said finding being based on just and proper appreciation of the evidence does not call for any interference.

09. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.15,000/- per month as Cook and Mason 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.4,500/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 45, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in

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 & 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.4,500/- per month	Rs.54,000/- per annum
02.	25% of (i) above to be added towards future prospects.	Rs.13,500/- Rs.54,000 + Rs.13,500 = Rs.67,500/-
03.	1/4 deduction towards personal and living expenses of the deceased	Rs.16,875/- Rs.67,500 – 16,875 = Rs.50,625/-
04.	Multiplier of 14 to be applied	Rs.7,08,750/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
06.	Towards loss of parental consortium to claimant nos. 2 & 3	Rs.10,000/- (as awarded by the Tribunal)
07.	Towards loss of parental consortium to claimant no.4 Satish Kumar Sahu (minor)	Rs.15,000/-
	Total Compensation	Rs.8,03,750/-

After deducting 50% from the above amount towards contributory negligence on the part of the claimant, the total compensation comes to Rs.4,01,875/-. Since the Tribunal has already awarded Rs.2,80,000/-

after deducting the same from Rs.4,01,875/-, the claimants are entitled for additional compensation of **Rs.1,21,875/-** which shall carry interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/-
Gautam Chourdiya
Judge

Akhilesh