

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1325 of 2014

1. Smt. Anjela Minj W/o Late Pawit Minj, Aged about 27 years, Occupation- House wife
2. Manbahadur S/o Late Nadhiya, Aged about 55 years, Occupation- Agriculturist
3. Smt. Pyari Minj W/o Manbahadur, Aged about 50 years, Occupation- House wife
4. Sahir Minj S/o Late Pawit Minj, Aged about 8 years
5. Yasmin Minj D/o Late Pawit Minj, Aged about 6 years
6. Astanjali S/o Late Pawit Minj, Aged about 4 years

Appellant No. 4 to 6 are minor through their natural Guardian, Mother Smt. Anjela Minj, All are R/o Village- Batouli P.S. and Tahsil- Batouli, District- Surguja (C.G.)

---- Appellants/Claimants

Versus

1. The Oriental Insurance Company Limited, Branch Office- Manendragarh near Ambedkar Chowk Ambikapur, P.S. & Tehsil- Ambikapur, District Surguja (C.G.)
2. Vishnu Gupta S/o Ganga Prasad Gupta, aged about 45 years, Occupation- Teacher, R/o Village- Batouli, P.S. and Tahsil- Batouli, District Surguja (C.G.)

---- Respondents/Non-applicants

For Appellants	:	Shri A.N. Pandey, Advocate
For Respondent 1	:	Shri T.K. Tiwari, Advocate
For Respondent No.2	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

07.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the First Additional Motor Accident Claims Tribunal, Ambikapur, Surguja (C.G.) vide award dated 08.10.2014 passed in M.A.C. No. 51 of 2011.
2. The Claimants/Appellants, unfortunate wife, mother, father and children of deceased- Pawit Minj, claimed compensation of Rs.33,25,000/- by filing a claim

petition under Section 163-A of the Motor Vehicles Act for death of deceased in the motor accident.

3. Facts of the case, in brief, are that on 10.06.2005, deceased- Pawit Minj along with his father-in-law was going from village Batouli to Banaras by driving Bolero bearing registration No. CG-15/B/1207, owned by non-applicant No.2 and insured with non-applicant No.1 and when they reached near Chopan, the offending vehicle- Pickup bearing registration No. UP-65/R/6961 which was being driven by its driver came from opposite side rashly and negligently, dashed the Bolero due to which Pawit Minj sustained grievous injuries and later on died.

4. The learned Tribunal, in the impugned award has awarded a compensation of Rs.3,69,500/- in favour of the Appellants/Claimants with interest @ 6% per annum from the date of application till its realization. On the date of accident, the vehicle- Bolero was insured with Respondent No.1/Insurance Company and the Insurance Company has not proved breach of policy condition, therefore, the Tribunal has fastened the liability upon the Insurance Company to pay compensation to the Claimants.

5. As submitted by both the parties, no counter appeal has been filed by the Respondents.

6. Learned counsel for the Appellant submits that the Tribunal has wrongly deducted 1/3rd towards personal and living expenses of the deceased whereas there are six dependents upon the deceased, therefore, it should have been 1/4th. He also submits that no amount towards future prospect has been granted by the Tribunal to the Claimants. He further submits that the Tribunal has awarded only Rs.9,500/- under the conventional heads, therefore, it being on the lower side deserves to be enhanced suitably.

7. On the other hand, learned counsel for the Insurance Company/Respondent No. 1 supports the impugned award and submits that the deceased himself was responsible for the accident and he had no valid and effective licence at the time of accident and the vehicle- Bolero was hired for carrying passengers of Gopiganj

(U.P.), therefore, the Insurance Company was not liable to pay any compensation to the Claimants.

8. Before Tribunal, Respondent No.2 has submitted its reply and denying adverse averments pleaded that the driver, owner and insurer of the offending vehicle-Pickup were not incorporated as party.

9. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of claim petition.

10. In the present case, the deceased was skilled driver aged about 42 years. As per Second Schedule of Section 163-A of the Motor Vehicles Act, the Tribunal has rightly considered the monthly income of the deceased as Rs.3,000 and his age in between age group of 40-45 and thus, the Tribunal has rightly applied the multiplier 15.

11. So far as arguments relating to deduction of 1/3rd towards personal and living expenses of the deceased; non-grant of future prospect by the Tribunal and grant of low amount under the conventional heads are concerned, considering the age of the deceased i.e. 42 years, the dependency, the nature of job, the deceased was self employed, the Second Schedule under Section 163-A of the Motor Vehicles Act, 1988 and 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** and **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, the Claimants/Appellants are held entitled for compensation in the following manner:-

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.3,000/- per month i.e. Rs.36,000/-
2	25% toward future prospects added to the annual income	(Rs.36,000/- + Rs.9,000/-) Rs.45,000/-
3	1/3rd deduction towards personal expenses of deceased	Rs.45,000/- – Rs.15,000/-) Rs.30,000/-
4	Multiplier of 15 applied	Rs.30,000/- x 15 = Rs.4,50,000/-

5	Under conventional heads: Towards loss of estate; loss of consortium & funeral expenses	Rs.70,000/-
	Total Compensation	Rs.5,20,000/-

Since the Tribunal has already awarded Rs.3,69,500/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.1,50,500/-.

12. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimants/Appellants shall be entitled to a total enhanced amount of compensation of Rs.1,50,500/- with further direction of payment of interest on the enhanced amount of compensation with interest @ 6% per annum from the date of application till its realization. However, rest of the conditions of the impugned award shall remain intact.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge