

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 554 of 2013**

1. Smt. Vandana Singh W/o Late Vikas Singh Aged About 22 Years,
2. Smt. Varsha Singh Thakur Aged About 44 Years,
3. Narayan Singh S/o Late Jagdev Singh Aged About 45 Years,
4. Vasu Singh S/o Narayan Singh Thakur Aged About 17 Years
Minor, Through Father Appellant No. 3.

All are R/o Ganesh Nagar, Near Mahamaya Mandir, Bilaspur,
Tah. Bilaspur, Civil And Revenue Distt. Bilaspur (C.G.)

---- Appellants/Claimants

Versus

1. Balram Prasad S/o Seetaram Kumhar Aged About 31 Years R/o
Mungadeeh, P.S. Paali, Civil And Revenue Distt. Korba (C.G.).
(Truck No. CG04 HC 0910) (Driver)
2. Ramshankar Jayaswal S/o M. Jayaswal R/o C/o Jayaswal
Automobiles, Paali Road, Deepika, Civil and Revenue District
Korba (C.G.). (Truck No. CG04 HC 0910) (Owner)
3. The Divisional Manager S/o The New India Insurance Co. Ltd.,
Near Bus Stand, Bilaspur, Civil And Revenue Distt. Bilaspur
(C.G.). (Truck No. CG04 HC 0910) (Insurer)

---- Respondents

For Appellants	:	Shri Pushkar Sinha, Advocate.
Respondent No. 1 & 2	:	None.
For Respondent No. 3	:	Shri H.P. Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

26/04/2019

- 1) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 20/03/2013 passed by Vth Additional Motor Accident Claims Tribunal, Bilaspur, District Bilaspur (C.G.) in Claim Case No.

35/2012 awarding total compensation of Rs. 4,53,000/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

- 2) As per claim petition, on 02/12/2011 at around 08:45 P.M. deceased Vikas Singh, 25 years of age, earning Rs. 9,800/- per as Manager, **was** riding his motorcycle and going towards Bilaspur to Pali with a moderate speed. However, when deceased reached near Beltara Liquor Shop, at that time the driver of offending vehicle stopped the Truck without giving any indication. On the way non-applicant No. 1./Balram Prasad by driving Truck bearing No. CG04 HC 0910 (offending vehicle) in a rash and negligent manner dashed the deceased. As a result of this accident Vikas Singh sustained grievous injury and died on the spot. At the time of accident the offending vehicle was owned by non-applicant No. 2/Ramshankar Jayaswal and insured with Non-applicant No. 3/New India Insurance Co. Ltd.
- 3) On claim petition being filed by the claimants, wife, parents and brother under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
- 4) Learned counsel for the appellants/claimants submits as though he has raised various grounds in this memo of appeal, however, he is not pressed on those grounds and is assailing the awards on the following grounds only :-
 - i. that income of the deceased has wrongly been considered by the Tribunal as Rs. 3000/- per month; whereas it should have been Rs. 9800 per month as per Ex. P-8.
 - ii. that 1/3rd deduction towards personal and living is also against the law and it should have been 1/4th.
 - iii. that no amount towards future prospect has been granted to the claimants.

iv. that multiplier of 17 has wrongly been applied and considering the age of the deceased, it should have been 18.

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*** and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

- 5) Learned counsel for the respondent/Insurance Company oppose the contention made by the learned counsel for the appellants and submits that there is no specific evidence adduced by the claimants regarding the income of deceased as per Ex. P-8 and himself admitted by the claimant, deceased was driving the motorcycle and dashed the vehicle Truck, therefore, it needs contributory negligence on part of the deceased but learned Tribunal has not considered the contributory negligence on part of the deceased and just and proper award is passed in favour of claimants, which needs no interference by this Court.
- 6) No counter appeal is filed by the respondents as submitted by both the parties.
- 7) Heard learned counsel for the parties and perused the material available on record.
- 8) As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs. 9,800/- per month as Manager 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 semi skilled person as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 25 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court

in *Sarla Verma and 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 4500 per month.	(Rs. 4500x12) = Rs. 54000 per annum
02.	40 % of (i) above to be added towards future prospects.	(Rs. 54000 + 21600) = Rs. 75600/-
03.	1/3 deduction towards personal and living expenses of the deceased	(Rs. 75600 - 25200) = Rs. 50400 /-
04.	Multiplier of 18 to be applied	(Rs. 50400 x 18) = Rs. 90720/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
	Total compensation	Rs. 9,77,200/-

Since the Tribunal has already awarded Rs. 4,53,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 5,24,200/- with interest @ 7.5% 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 is allowed in part with modification in the impugned award to the above extent.

-Sd/-
(Gautam Chourdiya)
Judge