

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 208 of 2017**

1. Shiv Kumar Tekam S/o Late Raghubir, Aged About 21 Years Caste Gond,
2. Amrit Tekam S/o Late Raghubir, Aged About 18 Years Caste Gond,

Both R/o 16 Block Jhopdi, Machadoli, P.S. Bango, Block Podi-Uroda, Tahsil Podi-Uroda, District- Korba, Chhattisgarh.

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

1. Arjun Kumar Nayak S/o Mahabir Nayak, Aged About 22 Years R/o 16 Block Jhopdi, Machadoli, P.S. Bango, Block Podi-Uroda, Tahsil Podi-Uroda, District- Korba, Chhattisgarh.
2. Smt. Naveeta Madhurima Bhagat W/o Sandeep Masih, D/o Late Sundarm Bhagat, R/o Quarter No. H/185, 16 Block Jhopdi, Machadoli, P.S. Bango, Block Podi-Uroda, Tahsil Podi-Uroda, District Korba, Chhattisgarh.
3. S.B.I. General Insurance Company Limited, Branch Office 2nd Floor, Rama Port, Main Road, Near Mahima Big Bazar, Vyapar Vihar Road, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellants
For Respondent no.3

Shri F.S. Khare, Advocate.
Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****23/01/2019**

1. This appeal is by the claimants against the award dated 24.10.2016 passed by the Learned Additional Tribunal of Additional Motor Accident Claims Tribunal, Katghora, District Korba, C.G. in Claim Case No.53/2015 awarding total

compensation of Rs.2,84,000/- with interest @ 09 per annum from the date of application till realization, fastening liability on the insurance company.

2. As per claim petition, on 10.06.2015 deceased Hirmaniya Gond, aged about 50 years, earning Rs.8,000 to 10,000/- per month, working as a labour and also doing other works, died in the motor vehicular accident caused due to rash and negligent driving of vehicle Jeep Xylo bearing registration no. CG12/AE/8309 by non-applicant No.1.
3. On claim petition being filed by the claimants 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 under:
 - (i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas it should have been Rs.8,000/- per month.
 - (ii) that 1/2 deduction towards personal and living is also against the law and it should have been 1/3.
 - (iii) that multiplier of 13 has wrongly been applied and considering the age of the deceased, it should have been 18.
 - (iv) 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. No amount towards loss of filial and other consortium has been granted.

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, 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.***

5. 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 matters has rightly awarded compensation which needs no interference by this Court.
6. Heard learned counsel for the parties and perused the material available on record.
7. So far as the income of the deceased is concerned, the claimants have pleaded that the deceased was working as a Labour and other works and thereby earning Rs.8,000/- to Rs.10,000/- per month. But no evidence has been adduced

by the claimants to substantiate the said plea. In such circumstances, considering the nature of job of the deceased and the minimum wages at the relevant time, his monthly income can safely be taken as Rs.5,000/- i.e. Rs. 60,000/- per annum. As the deceased was 50 years of age, the Tribunal was justified in applying the multiplier of 13. However, the Tribunal has fallen in error in deducting 1/2 towards personal and living expenses of the deceased and considering the number of dependents i.e. 2, the Tribunal should have deducted 1/3rd under this head. Similarly, the Tribunal has not awarded any amount towards future prospect whereas considering the age of the deceased and nature of his job 25% of his annual income ought to have been added thereto towards future prospect in the light of decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra). Thus, in view of the decisions **Sarla Verma, Pranay Sethi & Magma (supra)**, the claimants are held entitled for compensation in the following manner:-

SI No.	Heads	Calculation (in rupees)
1.	Income of the deceased	Rs.5,000/- x 12 = Rs.60,000/-per annum
2.	25 % of to be added towards future prospects.	Rs.15,000/- Rs.60,000 + Rs.15,000/- = Rs.75,000/-
3.	1/3 deduction towards personal and living expenses of the deceased	Rs.25,000/-

4.	Annual Loss of dependency	Rs.75,000/- – Rs.25,000/- = Rs. 50,000/-
5.	Multiplier of 13 to be applied	Rs.50,000 x 13 = Rs.6,50,000/-
6.	For loss of love and affection, funeral expenses and medical expenses	Rs.50,000/- (as awarded by the Tribunal)
7.	Towards loss of parental consortium	Rs. 20,000/-
	Total Compensation	Rs. 7,20,000/-

8. Since the Tribunal has already awarded Rs.2,84,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,36,000/- with interest @ 9% 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