

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 44 of 2013

1. Smt. Chintamani Kashayap Wd/o Late Sayabo Kashyap Aged About 19 Years
2. Smt. Sukali W/o Kosaram Kashyap Aged About 42 Years
3. Kosaram Kashyap S/o Late Dasoram Kashyap Aged About 45 Years
4. Miss Bhumika D/o Late Sayabo Kashyap Aged About 2 Years Minor, Thru-Mother Smt. Chintamani Kashyap

All R/o Jadakontapara, Opposite Gopal Crasher Village Chhapar Bhanpuri, P.S. Bandaji, Distt. Bastar C.G., District : Bastar(Jagdalpur), Chhattisgarh

---- Appellants

Versus

1. Baiduram Mourya, S/o Lakhmuram Mourya Aged About 29 Years Main Road, Chhapar Bhanpuri, P.S. Bandaji, Distt. Bastar C.G
2. Ved Prakash Goshwami S/o B.P. Goshwami Village- Usaribeda, P.S. Lohandiguda, Distt. Bastar C.G
3. Branch Manager S/o The Oriental Insu. Co. Ltd., Main Road Jagdalpur, Distt. Bastar C.G

---- Respondents

For Appellants	: Shri Praveen Durandhar, Advocate
For Respondents- 1 and 2	: None appears
For Respondent- 3	: Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

08.03.2019

1. Appellants/claimants have assailed the impugned award dated 16.10.2012 passed by learned Second Additional Motor Accident Claim Tribunal, Bastar at Jagdalpur (for short, 'the Tribunal') in Claim Case No.129 of 2012, whereby learned Tribunal partly allowed the claim of compensation made by the appellants and awarded a sum of Rs.4,94,000/-.

2. Brief facts for disposal of this appeal are that on 31.08.2010 Commander Jeep bearing No.CG-17 ZD 1025 (for short, 'offending

vehicle') dashed one cyclist namely, Sayabo Kashyap. In the said accident, Sayabo Kashyap died on the spot.

3. Claimants who are daughter, wife and parents of deceased Sayabo Kashyap filed claim application claiming Rs.8,95,000/- in total mentioning therein that on the date of accident all of them were dependant on the income of the deceased, who was aged about 23 years of age.

4. Respondents- 1 and 2, who are owner and driver respectively, did not submit any reply to the claim application.

5. Respondent- 3, the Insurance Company submitted its reply and pleaded that on the date of accident driver of the offending vehicle was not possessing valid and effective driving license, there was no permit and fitness certificate to ply the said vehicle, therefore, there was violation of conditions of Insurance Policy.

6. Learned Claims Tribunal while appreciating the pleadings and evidence available on record held that offending vehicle met with an accident, which was driven by competent licensed driver; deceased Sayabo Kashyap died in the accident; and as there was no violation of conditions of Insurance Policy and held the Insurance Company liable to pay compensation of Rs.4,94,000/- to the claimants.

7. Learned counsel for the appellants submitted that learned Claims Tribunal committed an error in awarding less amount of compensation as it assessed monthly income of deceased at Rs.3,000/- per month, which is on lower side. In fact, on the date of accident minimum wage prevailing in

the State for an unskilled labour was Rs.3,488/-. He argued that learned Claims Tribunal not awarded any amount towards future prospects ignoring age of deceased, who was 23 years old on the date of accident. He further submitted that learned Claims Tribunal awarded meagre amount on other conventional heads and prays for enhancement of award suitably.

8. Per contra, learned counsel for the Insurance Company supported the award and argued that the claimants failed to prove nature of work and income of the deceased, therefore, learned Claims Tribunal rightly assessed monthly income of the deceased as Rs.3,000/-.

9. I have heard learned counsel for the parties and perused the record. Undisputedly, Sayaboram Kashyap died in the accident that occurred due to rash and negligent driving of driver of the offending vehicle-Jeep. Offending vehicle was insured with respondent- 3, Insurance Company. The claimants have specifically pleaded in the claim application that on the date of accident deceased was doing work of labour in *Goyal Gitti Khadan* at village Chapar, Bhanpuri and doing agricultural work also. They have pleaded that by the aforementioned work, he was earning Rs.130/- per day. Chintamani Kashyap (AW1), wife of deceased was examined before learned Claims Tribunal who in her evidence specifically stated that her husband was working as labour in *Goyal Gitti Khadan* at village Chapar, Bhanpuri and was earning Rs.130/- per day. It is true that no documentary evidence was produced by the claimants to this effect. At the same time, it cannot be lost sight of the fact that on the date of accident the deceased was engaged as a labour only and did not hold any post in the said *Gitti*

Khadan, therefore, it cannot be expected from the claimants to produce any income certificate. Even otherwise, taking into consideration that the deceased was working as labour and earning livelihood for himself and his family members, a reasonable amount of income is to be assessed by the Claims Tribunal in the aforementioned facts and circumstances.

10. In the case in hand, the deceased was survived by his little daughter, aged about 2 years, widow and his parents and for whose survival and livelihood he must have definitely worked hard. Also looking to the pleadings and evidence available on record that accident is of the year 2010, the deceased was working as labour, in the considered opinion of this Court income of the deceased can very safely be taken as Rs.3,500/- per month.

11. Apart from the above monthly income, the appellants will also be entitled for an addition of 40% of the income of deceased towards future prospects as held by the Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in 2 AIR 2017 SC 5157, wherein the persons who are self employed and working on fixed pay and below 40 years are held to be entitled for an additional sum of 40% of the income towards future prospects.

12. In case at hand, deceased was aged about 23 years, therefore, an amount of Rs.1,400/- ($3500 \times 40/100 = 1,400$) i.e., 40% of income towards future prospects is to be added to the monthly income of Rs.3,500/-, which comes to Rs.4,900/- per month and Rs.58,800/- per annum. The number of claimants are 4 and therefore, as per law laid down by Hon'ble Apex

Court in the matter of **Sarla Verma Vs DTC** reported in 2009 (6) SCC 121, the deduction towards personal expenses would be $\frac{1}{4}^{\text{th}}$ of income of the deceased ie Rs.14,700/- ($58800 \times \frac{1}{4} = 14,700$). After deducting personal expenses from the yearly income of the deceased, yearly loss of dependency of the claimants comes to Rs.44,100/- ($58800 - 14700 = 44100$). Deceased was aged about 23 years at the time of accident, therefore, multiplier of 18 is applicable which makes the total loss of dependency to Rs.7,93,800/- ($44100 \times 18 = 7,93,800$).

13. In addition to the aforementioned amount of dependency, appellants are also entitled for a sum of Rs.70,000/- towards other conventional heads, which makes the total compensation as Rs.8,63,800/- (Rupees eight lakhs sixty three thousand eight hundred only).

14. The appellants are now entitled for a total sum of Rs.8,63,800/- instead of Rs.4,94,000/-, along with interest @ 6% per annum from the date of filing of the claim petition till its realisation from respondent-3/Insurance Company. Other conditions imposed by learned Claims Tribunal will remain intact.

15. Appeal is partly allowed and the impugned award is modified as mentioned in preceding paragraphs.

16. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE