

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Miscellaneous Appeal (Civil) No. 1198 of 2014

1. Baliram Bhaina, aged about 50 years, S/o Lachchhiram
 2. Sukwara Bai, aged about 42 years, W/o Baliram Bhaina
 3. Sundarlal, aged about 19 years, S/o Baliram Bhaina
 4. Kailash Bai, aged about 27 years, D/o Baliram Bhaina, R/o: Village: Mohtara, Tahsil Jaijaipur, Civil & Revenue District Janjgir-Champa, Chhattisgarh
 5. Antika Kumari, aged about 18 years, D/o Baliram Bhaina
 6. Lachchhiram Bhaina, aged 72 years, S/o Late Jhaduram
- Appellants No. 1 to 3 & 5 to 6 are all by caste, Bhaina, all residents of Village: Risda, Police Station: Baradwar, Tahsil: Champa, Civil & Revenue District: Janjgir-Champa, Chhattisgarh

---- Appellants/Claimants

Versus

1. M/s Prakash Industries Limited, Ring Road No.2, Raipur, Tahsil: Raipur, Civil & Revenue District: Raipur, Chhattisgarh
(Vehicle Owner)
2. Branch Manager, Oriental Insurance Company Limited, Gitanjali Building, Main Road, Old Bus Stand, Korba, Civil & Revenue District: Korba, Chhattisgarh
(Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri Mirza Kaiser Baeg, Advocate
For Respondent No. 1	:	Shri Viprasen Agrawal, Advocate
For Respondent No. 2	:	Shri Sandeep Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

19.02.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of compensation awarded by the First Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa (C.G.) vide award dated 01.10.2014 passed in Claim Case No. 02 of 2014.
2. The Claimants/Appellants, unfortunate parents, grand-father and siblings of deceased- Suresh Bhaina, aged about 24 years, claimed compensation of Rs.11,50,000/- by filing a claim petition under Section 163-A of the Motor Vehicles

Act, 1988 for death of Suresh Bhaina in the motor accident.

3. Facts of the case, in brief, are that deceased- Suresh Bhaina, aged about 24 years, was a driver in Prakash Industries Limited, Champa and was earning Rs.3,300/- per months. On 16.06.2013, when deceased- was driving vehicle Dumper bearing registration No. CG-04/G/6008, owned by non-applicant No.1 and insured with non-applicant No.2 and was coming by the said Dumper loaded with iron to Prakash Industries Ltd. Champa, in the night at about 1:00 am near village Kosmanda, one cattle got hit against the Dumper. As a result thereof, the said Dumper dashed the transformer and turned turtle, the deceased came out from the Dumper and loaded iron on the Dumper fell down on the deceased due to which he died on spot.

4. The learned Tribunal, in the impugned award, has awarded compensation of Rs.3,26,000/- in favour of the Claimants No. 1 & 2 with interest @ 6% per annum from the date of application till realization and has fastened the liability on non-applicants jointly and severally.

5. Learned counsel for the Appellants/Claimants submits that the Tribunal has wrongly deducted 50% towards personal & living expenses of the deceased whereas in view of Second Schedule under Section 163A of the Motor Vehicles Act, it should have been 1/3rd. He further submits that no amount towards future prospects has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably in view of the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

6. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that since the claim petition was filed under Section 163A of the Motor Vehicles Act where compensation has to be awarded as per structured formula given in Second Schedule and that the Tribunal has already awarded the compensation in accordance with the Second Schedule, including the amount under the conventional heads, there is no requirement of

granting any amount towards future prospect or enhancing the amount under the conventional heads.

7. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

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

9. The claimants have pleaded that the deceased was earning Rs.3,300/- per month as a driver, however, no documentary evidence in support thereof has been adduced. Therefore, the Tribunal was justified in considering the income of the deceased as Rs.3,000/- per month. Further, considering the age of the deceased i.e. 24 years, the dependency, the nature of his job and the decision of the Hon'ble Supreme Court in *Pranay Sethi* (supra) and Second Schedule under Section 163A of the Act, the Claimants No.1 and 2 are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.3,000/- per month (as considered by the Tribunal)	Rs.36,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.36,000/- + Rs.14,400/-) Rs.50,400/-
3.	1/3rd deduction towards personal and living expenses of Deceased as per Second Schedule under Section 163A of the Motor Vehicles Act	(Rs.50,400/- – Rs.16,800/-) Rs.33,600/-
4.	Multiplier of 17 applied as per Second Schedule under Section 163A of the Motor Vehicles Act	Rs.33,600/- x 17 = Rs.5,71,200/-
5.	Conventional heads: Towards loss of estate and funeral expenses	Rs.30,000/-
	Total Compensation	Rs.6,01,200/-

Since the Tribunal has already awarded Rs.3,26,000/-, after deducting the same from the above amount, the Claimants/Appellants No. 1 and 2 are held entitled for additional compensation of Rs.2,75,200/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge