

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1095 of 2014

1. Nemichand Dhiwar S/o Late Ganeshram Dhiwar, aged about 13 years
2. Chetan Kumar Dhiwar, S/o Late Ganeshram Dhiwar, aged about 10 years
3. Smt. Revti Bai Dhiwar, W/o Late Ganeshram Dhiwar, aged about 28 years

(Appellant No. 1 & 2 being minor on behalf of through their legal guardian mother Smt. Revti Bai Dhiwar, appellant No.3)

All R/o- Bhad-devpara, Arang, Post Office & Police Station- Arang, District- Raipur (C.G.)

---- Appellants/Claimants

Versus

1. Manoj Manikpuri, S/o Tilakdas Manikpuri, aged about 27 years, R/o- Nayapara, Mahasamund, Post Office, Police Station & Tahsil- Mahasamund, District- Mahasamund, (C.G.)
(Driver of vehicle Matador bearing registration No. C.G.-06/ZB/0102)
2. Gadiwan Hamal Sangh, through the President, Gadiwan Hamal Sangh, R/o- Station Road, Mahasamund, Post Office, Police Station & Tahsil- Mahasamund, District Mahasamund (C.G.)
(Owner of vehicle Matador bearing registration No. C.G.-06/ZB/0102)
3. The New India Insurance Company Limited, through Branch Manager, Branch Office, Madina Building, Jail Road, Raipur, Post Office- Raipur, Police Station- Golbazar, Tahsil & District- Raipur (C.G.)
(Insurer of vehicle Matador bearing registration No. C.G.-06/ZB/0102)

---- Respondents/Non-applicants

For Appellant	:	Shri Dharmesh Shrivastava, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Samir Singh, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

03.01.2019

1. This appeal is by the Claimants/Appellants against the award dated 11.07.2014 passed by the Second Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No. 66 of 2012 awarding total compensation of Rs.5,68,600/- with simple interest @ 6% per annum from the date of application till realization, fastening liability on the Respondents jointly and severally.

2. As per claim petition, on 04.12.2008 deceased- Ganeshram Dhivar, aged 30 years, earning Rs.6,000/- per month as Mason (*Rajmistri*), died in the motor vehicular accident caused due to rash and negligent driving of vehicle Metador bearing registration No. CG-06/ZB/0102 by non-applicant No.1/Respondent No.1- Manoj Manikpuri. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

3. On claim petition being filed by the Claimants/Appellants 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 that the income of the deceased has wrongly been considered as Rs.3,000/- by the Tribunal whereas it should have been Rs.6,000/-. He also submits that the Tribunal has considered 30% towards future prospects whereas it should have been 50%. He further submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. In support of his contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.**

5. On the other hand, learned counsel for Respondent No.3 opposes the appeal and submits that the multiplier of 18 has wrongly been applied by the Tribunal and looking to the age of the deceased i.e. 30 years and also in view of the decision in the matter of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,** it should have been 17.

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

7. As regards income of the deceased, though the Claimants have pleaded that the deceased was earning Rs.6,000/- per month as mason but no documentary or oral evidence in support thereof has been adduced. Therefore, the Tribunal has

rightly considered the income of the deceased as Rs.3,000/- per month as per minimum wages at the relevant time.

8. So far as argument relating to low amount under the conventional heads is concerned, the Tribunal has erred in awarding only Rs.2,000/- for funeral expenses and Rs.5,000/- for loss of consortium which appears to be on lower side. Therefore, this Court is of the opinion that in view of the decision in the matter of *Pranay Sethi* (supra), the Claimants/Appellants are entitled to Rs.70,000/- under the conventional heads.

9. So far as argument regarding future prospects is concerned, the Tribunal has erred in granting 30% towards future prospects. Therefore, this Court is of the opinion that looking to the age of the deceased i.e. 30 years and in view of the decision in the matter of *Pranay Sethi* (supra), there should be 40% addition to the annual income of the deceased towards future prospect.

10. So far as argument advanced by learned counsel for the Insurance Company/Respondent No.3 regarding multiplier is concerned, looking to the age of the deceased i.e. 30 years of age, the multiplier of 18 has wrongly been applied by the Tribunal, therefore, in view of the decision in the matter of *Smt. Sarla Verma* (supra), it can safely be taken as 17 in the instant matter.

11. Considering the facts and circumstances of the case, the evidence available on record, the Claimants/Appellants are entitled for enhanced compensation in the following manner:

Sl.No.	Heads	Calculation
1	Income of the deceased	Rs.36,000/- per annum (as considered by the Tribunal)
2	By adding 40% income would be increased in future to annual income	(Rs.36,000/- + Rs.14,400/-) Rs.50,400/-

3	1/3rd deduction towards personal expenses of the deceased	(Rs.50,400/- – Rs.16,800/-) Rs.33,600/-
4	After multiplier of 17 applied	Rs.33,600/- x 17 = Rs.5,71,200/-
5	For conventional heads	Rs.70,000/-
	Total Compensation	Rs6,41,200/-

Since the Tribunal has already awarded Rs.5,68,600/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.72,600/-.

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.72,600/- with further direction of payment of simple interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment. However, rest of the conditions of the impugned award shall remain intact.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge