

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 632 of 2014

1. Bhav Krishna Mandal S/o Shrikant Mandal, aged about 50 years
2. Smt. Malti Mandal W/o Bhav Krishna Mandal, aged about 42 years
3. Kumari Rakhi Mandal D/o Bhav Krishna Mandal, aged About 19 years
4. Pranabh Mandal, aged about 14 years (Minor), through legal guardian Smt. Malti Mandal

All are resident of Dandami Madiya Chowk, Guru Ghasidas Ward, near Jahajbhata, Jagdalpur, Police Station-Jagdalpur, District- Bastar (C.G.)

---- Appellants/Claimants

Versus

1. Saturam Sori S/o Katluram Sori, aged about 48 years R/o Uday Nagar Para, Kanker, District Kanker (C.G.) **(Vehicle Driver)**
2. Shivprasad Nag S/o Kartikram Nag, aged about 65 years, R/o Sector-2, Professor Colony, Bhatagaon, Raipur (C.G.)
3. Chola Mandalam, M.S. General Insurance Company Limited, Parasnagar Chowk, Railway Station Line, Raipur, District Raipur (C.G.) Now Pandri, Jeevan Beema Marg, Pandri, Raipur, District Raipur (C.G.)

---- Respondents/Non-applicants

For Appellant	:	Shri H.S. Patel, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Amit Bakshi, Advocate appears on behalf of Shri Abhishek Sinha, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

08.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Bastar at Jagdalpur (C.G.) vide award dated 01.04.2014 passed in Claim Case No.05 of 2013.

2. The Claimants/Appellants, unfortunate mother, father, brother and sister of deceased- Ku. Usha Rani Mandal, who was aged about 16 years, claimed compensation of Rs.78,82,000/- by filing a claim petition under Section 166 of the

Motor Vehicles Act, 1988 for death of deceased in the motor accident.

3. Facts of the case, in brief, are that on 16.08.2012, the deceased-Ku. Usha Rai Mandal was returning from the school to her house, at that time, Respondent No.1 driver of the offending vehicle Truck bearing registration No. C.G.-04-J/1677 driving the said vehicle in a rash and negligent manner dashed the deceased near Dandami Madiya Chowk. Due to the said accident deceased sustained grievous injuries on her person and died on spot.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.1,85,000/- in favour of the Appellants/Claimants with interest @ 6% per annum from the date of application till realization. The Tribunal has also directed that Respondents are jointly and severally liable for payment of compensation to the Claimants/Appellants.

5. Learned counsel for the Claimants/Appellants submits that the accident occurred in the month of August, 2012, the deceased was taking tuition and was earning Rs.5,000/- per month. Even, as per minimum wages prevalent at that time her monthly income ought to have been taken at Rs.4,000/- but the Tribunal has considered the same as Rs.15,000/- per annum which appears to be on the lower side. He further submits that the Tribunal has not awarded any amount towards future prospect and this may also be granted in this appeal in view of **National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.** He also submits that under conventional heads, the Tribunal has awarded only Rs.50,000/- which is on lower side and it may also be enhanced.

6. Learned counsel for the Respondent No. 3, however, opposes the appeal and submits that the learned Tribunal has rightly awarded the amount of compensation, therefore, it is just and reasonable, which does not call for any interference in the instant appeal.

7. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of the Claims Tribunal.

8. *Firstly*, so far as argument relating to income of the deceased is concerned, the Tribunal has determined the annual income of the deceased as Rs.15,000/-. As the contention of the Claimants is that she was taking tuition and was earning Rs.5,000/- per month, looking to the age of deceased i.e. 16 years and the price index at the relevant time, this Court is of the opinion that the income considered by the Tribunal as Rs.15,000/- per annum is on the lower side and it can safely be taken as Rs.4,000/- per month.

9. *Secondly*, so far as argument relating to non-grant of any amount towards future prospect is concerned, in view of the decision in *Pranay Sethi* (supra), considering the age of the deceased and nature of her job, there should be 40% addition to the annual income of the deceased towards future prospect.

10. *Thirdly*, so far as argument relating to conventional heads is concerned, the Tribunal has awarded Rs.50,000/- which cannot be said to be on the lower side in view of the decision in *Pranay Sethi* (supra) and in view of the decision in the matter of **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram & Ors. In Civil Appeal No. 9581 of 2018 arising out of SLP (Civil) No. 3192 of 2018 dated 19.09.2018** regarding for grant of filial consortium to the parents of the deceased. Therefore, I am of the opinion that the Tribunal has not erred in awarding the amount on the above heads and it is just and proper.

11. On the basis of aforesaid discussions, this Court is of the view that the Claimant/Appellant is entitled for compensation in the following manner:

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.4,000/- per month i.e. Rs.48,000 per annum

2	40% towards future prospects added to annual income	(Rs.48,000/- + Rs.19,200/-) Rs.67,200/- per annum
3	50% deduction towards personal expenses of the deceased	Rs.33,600/-
4	Multiplier of 18 applied	Rs.33,600/- x 18 = Rs.6,04,800/-
5	For conventional heads	Rs.50,000/-
	Total Compensation	Rs.6,54,800/-

Since the Tribunal has already awarded Rs.1,85,000/-, after deducting the same from the above amount, the Claimants are held entitled for additional compensation of Rs.4,69,800/-.

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.4,69,800/- with further direction of payment of 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