

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 892 of 2014**

1. Smt. Gurbari Bai W/o Late Shankar Das Aged About 44 Years,
2. Narayan Das S/o Late Shankar Das Aged About 25 Years,
3. Minor Anardas S/o Late Shankar Das Aged About 17 Years,
4. Minor Durgesh S/o Late Shankar Das Aged About 15 Years,

S. No. 3 & 4 Through Natural Guardian Mother Smt. Gurbari Bai W/o Late Shri Shankar Das, aged about 44 years.

All are R/o Saraitola, Post- Saraitola, P.S. And Tah. Tamnar, Civil and Revenue District Raigarh (C.G.).

---- Appellants/Claimants

Versus

1. Harmindar Singh S/o Bacchan Singh R/o G.E. Road, Tatibandh, Raipur, Distt. Raipur (C.G.).
2. Nirbhav Singh S/o Jodha Singh Aged About 25 Years, Occupation Driver of Vehicle, R/o T.P. Nagar, Hathako, Bhilai, Distt. Durg (C.G.).
3. The Reliance General Insurance Company. Ltd. S/o Through Branch Manager, Registered Office Shop No. 412, 413, 4th Floor, Ravi Bhawan, Near Jai Stambh Chowk, Raipur, Tah. And Distt. Raipur (C.G.).

---- Respondents

For Appellants	:	Shri Manoj K. Sinha, Advocate.
For Respondent No. 3	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

10/04/2019

- 1) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 10/10/2013 passed by the First Additional Motor Accident Claims

Tribunal, Raigarh in Claim Case No. 112/2011 awarding the total compensation of Rs. 3,34,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on Insurance Company alongwith non-applicant Nos. 1 & 2 jointly and severally.

- 2) As per claim petition, on 03/09/2012 at around 9:30 AM to 10:00 AM deceased Shankar Das, 46 years of age earning Rs. 6,000/- per month by doing Carpenter work, was riding his bicycle & going towards Tamnar from village Gare, near village Kojemura Jindal School with a moderate speed. However, on the way non-applicant No. 2 Nirbhav Singh by driving vehicle Trailer bearing No. CG04 JA 5161 (offending vehicle) in a rash and negligent manner dashed the bicycle of the deceased. As a result of this accident Shankar Das died during treatment. At the time of accident the offending vehicle was owned by non-applicant No. 1 and insured with non-applicant No. 3.
- 3) On the claim petition being filed by the claimants, wife & children under section 166 of Motor Vehicles Act, 1988, the Tribunal considering the evidence led by the parties passed an award as mentioned above.
- 4) Learned counsel for the appellants/claimants submits as though he has raised various grounds in this memo of appeal, however, he is not pressed on those grounds and is assailing the awards on the following grounds only :-
 - i. that the income of the deceased has wrongly being considered by the Tribunal as Rs. 3,000/- per month; whereas he was earning Rs. 6,000/- per month as Carpenter.
 - ii. that 1/3 deduction towards personal and living is also against the law and it should have been 1/5th, looking to the four person dependent upon deceased.
 - iii. that no future prospect has been granted to the claimants.

iv. that the amount awarded towards conventional head and other heads like medical expenses also being on the lower side deserves to be enhanced suitably.

In support of above contentions, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of **Smt. Sarla Verma and Others V/s Delhi Transport Corporation and another, (2009) 6 SCC 121 and National Insurance Co. Ltd. V/s. Pranay Sethi, (2017) 16 SCC 680.**

- 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) No counter appeal has been filed by the respondent as submitted by counsel for the parties.
- 7) Heard, learned counsel for the parties and perused the material available on record.
- 8) As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs. 6000 per month as Carpenter but no documentary or evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs. 3,500 per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 46 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma and Pranay Sethi* (supra), the claimants are held entitled for compensation in the following manner:-

Sl. No.	Heads	Calculation (In rupees)
01.	Income of the deceased @ Rs. 3,500 per month	Rs. 42,000/- (Per annum)
02	25% of (1) above to be added towards future prospect	(Rs. 42000 + Rs. 10500) = Rs. 52,500/-
03.	1/3th deduction towards personal and living expenses of the deceased	(Rs. 52500 – Rs.17500) = Rs. 35,000/-
04.	Multiplier of 13 to be applied.	Rs. 4,55,000/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
	Total compensation	5,25,000/-

Since the Tribunal has already awarded Rs. 3,34,000/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 1,91,000/- with interest @6% 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