

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 234 of 2017**

- Smt. Gangiya Bai Sahu S/o Shri Bhareatlal Sahu, Aged About 60 Years R/o Village Deori, Post Gullu, Thana Arang, Civil And Revenue District Raipur Chhattisgarh.

----Appellant**Versus**

1. Manharan Sahu S/o Jaylal Sahu, Aged About 33 Years R/o Ward No. 21 Naya Rawanbatha, Mahasamund, Thana Mahasamund, Civil And Revenue District Mahasamund Chhattisgarh.
2. Purushottam Chandrakar, S/o Shri Chhannulal Chandrakar, Aged About 44 Years R/o Ward No. 12 Shankar Nagar Mahasamund, Thana And Tahsil Mahasamund Civil And Revenue District Mahasamund Chhattisgarh.
3. Divisional Manager, The New India Insurance Company Limited Divisional Office No. 2 First Floor, L I C Building Pandari Raipur Civil And Revenue District Raipur Chhattisgarh.
4. Tularam Sahu, S/o Late Shri Bharatlal Sahu, Aged About 36 Years R/o Village Birkoni, Thana And Tahsil Mahasamund Civil And Revenue District Mahasamund Chhattisgarh.
5. Smt. Thaneshwari Sahu, W/o Late Shri Yashwant Sahu, Aged About 25 Years Present Addrs. C/o Shri Shivram Sahu, R/o Village Torala, Post Bhurka, Thana, Gonbaranayapara, Civil And Revenue District Raipur Chhattisgarh.

---- Respondents

For Appellant
For Respondent No.3

Shri Sunil Sahu, Advocate.
Shri Anil Gulati, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

28/06/2019

This appeal is by the claimant against the award dated
10.01.2017 passed by 3rd Additional Motor Accident Claims

Tribunal, Raipur to the Court of First Additional Motor Accident Claims Tribunal, Raipur, District Raipur, C.G. in Claim Case No.252/11 awarding total compensation of Rs.4,38,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant nos. 1 & 2 along with non-applicant no.3 jointly and severally.

02. As per claim petition, on 26.05.2011 deceased Yashwant Sahu, 29 years, earning Rs.7,500/- per month as Data Entry Processing Operator, died in the motor vehicular accident caused due to rash and negligent driving of Metador bearing no. CG06-B-3230 by non-applicant No.1. At the time of accident, offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.

03. On claim petition being filed by the claimant i.e. parents of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.37,05,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellant/claimant submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds:-

(I) that income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas it should have been Rs.7,500/- per month looking to the job of the deceased.

(ii) that no amount towards future prospect has been granted to the claimants.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matter of, ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

05. On the other hand, learned counsel for the respondent/insurance company opposes the contention made by the appellant's counsel and supports the award except on the issue of deduction towards personal and living expenses of the deceased on the ground that since wife of the deceased remarried in the year 2015, the Tribunal was not justified in making 1/3 deduction and it should have been ½.

06. No counter appeal has been filed by the respondents as submitted by counsel for both the parties.

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

08. As regards income of the deceased, though the claimant has pleaded that the deceased was earning Rs.7,500/- per month as Data Entry Processing Operator but no documentary 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.4,500/- per month as per minimum wages of skilled person at the relevant time. The deduction of 1/3 made by the Tribunal towards personal and living

expenses of the deceased cannot be faulted with for the reason that the accident occurred on 26.05.2011 whereas the non-applicant no.5 wife of the deceased remarried in the year 2015 and, therefore, for the purpose of assessing dependency non-applicant no.5 can be considered as dependent of the deceased at the relevant time. Thus, considering the number of dependent on the deceased i.e. parents and wife, the Tribunal was justified in making 1/3 deduction towards personal and living expenses of the deceased. Hence, considering the age of the deceased i.e. 29, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, *Pranay Sethi* (supra), the claimant is held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.4,500/- per month.	Rs.54,000 per annum
02.	40% of (i) above to be added towards future prospects.	Rs.21,600/- Rs.54,000 + Rs.21,600 = Rs.75,600/-
03.	1/3 deduction towards personal and living expenses of the deceased	Rs.25,200/- Rs.75,600 – Rs.25,200 = Rs.50,400/-
04.	Multiplier of 17 to be applied	Rs.8,56,800/-
05.	Towards loss of funeral expenses	Rs.20,000/- (as awarded by

		the Tribunal)
06.	Towards loss of filial consortium	Rs.10,000/-
	Total Compensation	Rs.8,86,800/-

Since the Tribunal has already awarded Rs.4,38,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,48,800/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh