

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 187 of 2014

1. Smt.Madhuri Verma W/o Late Ramkumar Verma Aged About 27 Years
2. Minor Ku. Chhaya Verma D/o Late Ramkumar Verma Aged About 5 Years
3. Minor Ku. Diksha Verma D/o Late Ramkumar Verma Aged About 3 Years

Appellants No. 2 & 3 being minor on behalf of through their legal guardian mother appellant No.1 Smt. Madhuri Verma.

4. Govind Prasad Verma S/o Late Tijau Verma Aged About 60 Years
5. Smt. Shanti Bai Verma W/o Govind Prasad Verma Aged About 55 Years

All R/o Village Chhapor, PS Newra, Tahsil Tilda, Distt. Raipur (CG)

---- Appellants/claimants

Versus

1. Surjeet Singh S/o Pal Singh Aged About 33 Years R/o Khursipar, Near B.S.P. Plant Gate, Bhilai, P.S. Khursipar, Distt. Durg C.G., (Driver of vehicle truck bearing registration No. CG 07/C/6593)
2. Pramod Kumar Singh S/o Late Kripa Shankar Singh Permanent Address- R/o Care Of Sharda Batery T.P. Nagar, Hathkhoj, Bhilai, P.S. Khursipar, Distt. Durg C.G., Present Address- Bhanpuri, Dhanlaxmi Nagar, Sushila Bhawan, P.S. Khamtarai, Raipur, Distt. Raipur C.G. (Registered owner of vehicle truck bearing registration No. CG 07/C/6593)
3. A. The I.C.I.C.I. Lombard General Insurance Co. Ltd. Corporation Officer, Zeneth House, Keshav Rao Khade Marg, Mahalaxmi Mumbai- 400034.

B. The I.C.I.C.I. Lombard General Insurance Co. Ltd. Through Branch Manager, Branch Office, Unit No. 304-306, 3rd Floor, Lal Ganga Shopping Mall, G.E. Road, P.S. Gol Bazar, Raipur, Distt. Raipur C.G. (Insurer of vehicle truck bearing registration No. CG 07/C/6593)

---- Respondents

For Appellants	:	Shri Shivendu Pandya, Advocate.
For Respondent Nos. 1 & 2	:	None.
For Respondent No.3	:	Shri Saurabh Sharma, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04/02/2019

This appeal is by the claimants against the award 20.11.2013 passed by 4th Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No. 215/2011 awarding total compensation of Rs.4.20 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 & 2/driver & owner jointly and severely while exonerating non-applicant No.3/insurance company on the ground of breach of policy conditions.

02. As per claim petition, on 24.6.2009 deceased Ramkumar Verma, 32 years, earning Rs.6000/- per month as instrument helper and from agriculture work, died in the motor vehicular accident caused due to rash and negligent driving of vehicle truck bearing No. CG 07/C/6593 by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants, wife, children and parents of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the parties submit that no counter appeal has been filed by the insurance company or the owner.

05. Learned counsel for the appellants/claimants submits as under:

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3000/- whereas it should have been Rs. 6000/- which the deceased was earning as instrument helper and by doing agriculture work.

(ii) that 1/3rd deduction towards personal and living is also against the law and it should have been 1/4th as the number of dependents in this case are five.

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

(iv) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. No amount towards loss of filial and other consortium has been granted.

(v) that from the date of award till date, no amount has been deposited by the owner and therefore, in this case, order of pay and recover be passed.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121, National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680, Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018, Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796 and Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762.***

06. 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. Further, the Tribunal considering the fact that there is absolute breach of policy conditions was also justified in exonerating the insurance company and not giving any direction for pay and recover. Therefore, the impugned award is not required to be interfered with by this Court.

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

08. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.6000/- per month as instrument helper and by doing agriculture work, but no documentary or oral 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 and the price index at the relevant time. Further, considering the age of the deceased, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi*, and *Magma General Insurance Co. Ltd.* (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.	42,000/- per annum
02.	40% of (i) above to be added towards future prospects.	42,000 + 16,800 = 58,800/-
03.	1/4th deduction towards personal and living expenses of the deceased	58,800 – 14,700 =44,100/-
04.	Multiplier of 16 to be applied	7,05,600/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses.	70,000/-
06.	Towards loss of filial consortium to claimants No. 4 & 5 @ Rs.10,000/- each.	20,000/-
07.	Towards loss of parental consortium to claimants No. 2 & 3 @ Rs.15,000/- each.	30,000/-
	Total :	8,25,600/-

Since the Tribunal has already awarded Rs. 4.20 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,05,600/- with interest @ 6% per annum from the date of application till realization.

09. Considering the facts and circumstances of the case, keeping in view the decision of the Hon'ble Supreme Court in the matters of ***Manuara Khatun and others*** and ***Shivawwa and another*** (supra), this Court feels it proper to order for pay and recover in this case. Accordingly, non-applicant No.3/insurance company is directed to pay the total amount of compensation to the claimants within a period of one month from today and then recover the same from non-applicant No.2/owner of the offending vehicle in accordance with law. 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.

Sd/

(Gautam Chourdiya)

Judge

Khan