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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 956 of 2017

1. Smt. Raj Kumari Koram, W/o Late Rajkumar Koram, aged about 32 years
2. Ashutosh Koram S/o Late Rajkumar Koram, aged about 12 years
3. Sejal Koram, S/o Late Rajkumar Koram, aged about 16 years
Appellant No. 2 & 3 are minor, through natural guardian mother Rajkumari Koram, W/o late Rajkumar Koram
4. Lagan Singh, S/o Late Pancham Koram, aged about 60 years
5. Smt. Parwati Koram, W/o Shri Lagan Singh, aged about 56 years
All by Caste – Gond, R/o Village Goknai, Tahsil Pali, Civil and Revenue District Korba (C.G.)

---- Appellants/Claimants

Versus

1. Hardeep Singh Pulast, S/o Shri Dular Singh, At present R/o N.H. 15, New Rajaswa Colony, Rampur, Tahsil, Civil and Revenue District Korba (C.G.)
(Driver of the offending vehicle)
2. Khanij Adhikari Karyalay Collector, Korba, Tahsil and District Korba (C.G.),
Through: Director Geology and Mining Department Chhattisgarh State, Raipur (C.G.)
(Owner of the offending vehicle)

---- Respondents/Non-applicants

And

Miscellaneous Appeal (Civil) No. 954 of 2017

1. Smt. Raj Kumari Koram, W/o Late Rajkumar Koram, aged about 32 years
2. Ashutosh Koram S/o Late Rajkumar Koram, aged about 12 years
3. Sejal Koram, S/o Late Rajkumar Koram, aged about 16 years
Appellant No. 2 & 3 are minor, through natural guardian mother Rajkumari Koram, W/o late Rajkumar Koram
4. Lagan Singh, S/o Late Pancham Koram, aged about 60 years
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---- Respondents/Non-applicants

For Appellants	:	Shri Kalpesh Ruparel, Advocate
For Respondent No. 1	:	None
For Respondent No. 2	:	Ms. M. Aasha, P.L.

Hon'ble Shri Justice Gautam Chourdiya, J
Judgment on Board

13.05.2019

1. Above both appeals arise out of the same accident occurred on 21.11.2015 involving the same vehicle- Tata Sumo bearing registration No. CG-02-5524 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.
2. Both appeals arise out of separate award dated 29.03.2017 passed by the Additional Tribunal, Katghora, District Korba (C.G.) to the Upper Motor Accident Claims Tribunal, Katghora awarding compensation in favour of the Appellants/Claimants for the death of RajKumar Koram of Rs.6,60,000/- in Claim Case No. 116/2015 with interest @ 9% per annum from the date of applications till realization and awarding compensation in favour of the Appellants/Claimants for the death of Ishu Kumar @ Aayush Koram of Rs.3,68,000/- in Claim Case No. 115/2015 with interest @ 9% per annum from the date of applications till realization, fastening liability on the non-applicants jointly and severally in both claim petitions.
3. At the time of accident, non-applicant No.1 was driver and non-applicant No.2 was owner of the offending vehicle.
4. Brief facts necessary for disposal of both appeals are that deceased persons namely RajKumar Koram aged about 35 years (in Claim Case No. 116/2015) and Ishu Kumar @ Aayush Koram aged about 8 years (in Claim Case No. 115/2015) both were father and son. On the date of accident i.e. 21.11.2015, Rajkumar Koram and Ishu Kumar were coming from Korba to their residence at village Goknai by motorcycle bearing registration No. CG-12/M/9238 in which Ishu Kumar was the pillion rider, when they reached near village Banbadha, non-applicant No.1, driver of the offending vehicle Tata Sumo bearing registration No. CG-02-5524, owned by non-applicant No.2, driving the offending vehicle in a rash and negligent manner, dashed the motorcycle. As a result thereof, both Rajkumar Koram and Ishu Kumar

sustained grievous injuries. Rajkumar died during treatment whereas Ishu Kumar died on spot.

5. In M.A.(C) No. 956 of 2017, learned counsel for the Appellants/Claimants submits that income of deceased Rajkumar Koram has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas as per Ex.-P/10 it should have been Rs.13,000/- per month. He also submits that no amount towards future prospect has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

In M.A.(C) No. 954 of 2017, learned counsel for the Appellants/Claimants submits that deceased Ishu Kumar @ Aayush Koram was minor aged about 8 years at the time of accident and had not started earning. He further submits that the Tribunal assessed the notional income for a non-earning minor deceased at Rs.30,000/- per annum which is on the lower side. He also submits that no amount towards future prospect has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

6. On the other hand, learned counsel for Respondent No.2 supports the impugned awards and submits that in Claim Case No. 116/2015, the author of Ex.-P/10 regarding income of deceased Rajkumar Koram has not been examined before Tribunal. He further submits that in Claim Case 115/2015, looking to the age of deceased- Ishu Kumar, the Tribunal was justified in assessing income of deceased as Rs.30,000/- per annum and awarding compensation to the Claimants, therefore, the compensations awarded in both claim petitions do not call for any enhancement.

7. Heard learned counsel for the parties and perused the records.

8. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

9. M.A.(C) No. 956 of 2017 arises out of Claim Case No. 116/2015:

As regard income of deceased Rajkumar Koram, though the Claimants have

pleaded that the deceased was earning Rs.15,000/- per month as Counselor in District Hospital, Surajpur on ad hoc basis and Ex.-P/10 in support thereof has been filed but he was not permanent salary paid employee. Therefore, in these circumstances, in absence of any proof regarding actual income, the income of the deceased is considered as Rs.6,000/- per month as per minimum wages at relevant time of skilled person. Further, considering the age of the deceased, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in 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*** and ***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***, the Claimants/Appellants are held entitle for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ 6,000/- per month	Rs.72,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.72,000/- + Rs.28,800/-) Rs.1,00,800/-
3.	1/4th deduction towards personal and living expenses of Deceased	(Rs.1,00,800/- – Rs.25,200/-) Rs.75,600/-
4.	Multiplier of 16 applied	Rs.75,600/- x 16 = Rs.12,09,600/-
5.	<u>Conventional Heads:</u> Loss of consortium, loss of estate and funeral expenses	Rs.70,000/-
6.	Amount towards physical & mental agony suffered by the Claimants on account of death of deceased awarded by the Tribunal is considered as parental and filial consortium	Rs.1,00,000/- (as awarded by the Tribunal)
7.	Conveyance	Rs.3,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.13,82,600/-

10. Since the Tribunal has already awarded Rs.6,60,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.7,22,600/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

11. M.A.(C) No. 954 of 2017 arises out of Claim Case No. 115/2015:

Considering the facts and circumstances of the case, particularly the fact that it is not disputed by both the parties that deceased- Ishu Kumar @ Aayush Koram was a minor aged about 8 years on the date of accident and had not started earning, had he been alive, he would have certainly contributed substantially to the family of Appellants by working hard, therefore, in the opinion of this Court, ends of justice would be served, if the income of the deceased is considered as Rs.36,000/- per annum on notional basis. Further, considering the age i.e. 8 years, the multiplier of 16 applied by the Tribunal in view of decision of Rajasthan High Court in **Manju Devi & Anr. Vs. Shankar Singh & Ors, 2014 (2) ACCD 1124 (Raj)** and the decisions of the Hon'ble Supreme Court in matters of *Smt. Sarla Verma; Pranay Sethi* and *Magma General Insurance Co. Ltd.* (supra), the Claimants/Appellants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased	Rs.36,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.36,000/- + Rs.14,400/-) Rs.50,400/-
3.	50% deduction towards personal and living expenses of Deceased	(Rs.50,400/- – Rs.25,200/-) Rs.25,200/-
4.	Multiplier of 15 applied	Rs.25,200/- x 15 = Rs.3,78,000/-
5.	<u>Conventional Heads:</u> Towards loss of estate and funeral expenses	Rs.30,000/-
6.	Amount towards physical &	Rs.1,00,000/- (as awarded by the

	mental agony suffered by the Claimants on account of death of deceased awarded by the Tribunal is considered as filial consortium	Tribunal)
7.	Conveyance	Rs.3,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.5,11,000/-

- 12.** Since the Tribunal has already awarded Rs.3,68,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.1,43,000/- with interest @ 9% per annum from the date of accident till realization. However, rest of the conditions of the impugned award shall remain intact.
- 13.** In the result, both appeals are allowed in part with modification in the impugned awards to the above extent.
- 14.** No orders as to costs.

Sd/-
(Gautam Chourdiya)
Judge