

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 511 of 2014**

1. Smt. Bhag Bai Banjare Wd/o Late Shyamratan Aged About 42 Years
2. Loknath S/o Late Shyamratan Aged About 16 Years
3. Nikhalesh S/o Late Shyamratan Aged About 14 Years

Appellant Nos. 2 & 3 Minor, Through the Mother Natural Guardian
 Appellant No.1 Smt. Bhag Bai Banjare, All are R/o Ghursena, Tah.
 Nawagarh, P.S. Nandghat, Revenue Distt. Bemetara C.G., At post
 village Chhatauna, Hirri Mines, Tahsil Takhatpur, Distt. Bilaspur
 C.G.

---Appellants**Versus**

1. Lav Kush Kumar S/o Gaya Prasad R/o Banemau, P.S. Kunda,
 Harnamganj, Distt. Pratapgarh U.P., at post - Prakash Industries
 Limited, Champa, P.S. Champa, Distt. Janjgir-Champa C.G.
2. Prakash Industries Limited R/o Go Gaon, Ring Road No. 02, Raipur,
 Tahsil And Distt. Raipur C.G.
3. Branch Manager Iffco Tokyo General Insurance Company Ltd.,
 Lalganga Shopping Mall, Raipur, P.S. Raipur, Tah. And Distt. Raipur
 C.G.

---- Respondents

For Appellants
 For Respondent No.2
 For Respondent No.3

Shri Anand Kesharwani, Advocate.
 Shri Omprakash Agrawal, Advocate.
 Shri Amrito Das with Ms Pratibha Das,
 Advocate.

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

11/04/2019

This appeal is by the claimants against the award dated
 23.01.2014 passed by Additional Motor Accident Claims Tribunal,
 (FTC), Bilaspur, C.G. in Claim Case No.127/13 awarding total
 compensation of Rs.1,90,000/- with interest @ 6% per annum from the

date of application till realization, fastening liability on the Insurance Company/non-applicant no.3 along with non-applicant nos. 1 & 2.

02. As per claim petition, on 24.03.2012 deceased Suresh Kumar, aged about 23 years, earning Rs.6,000/- per month as Mason, died in the motor vehicular accident caused due to rash and negligent driving of Trailer bearing no. CG04-J-7624 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 claimants i.e. Mother and two younger brothers of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.15,74,000/-, 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 appellants/claimants 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.6,000/- per month.

(ii) that 1/2 deduction towards personal and living is also against the law whereas it should have been 1/3, looking to the dependency upon deceased i.e. mother and two younger brothers.

(iii) that multiplier of 10 has wrongly been applied and considering the age of the deceased, it should have been 18.

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

(v) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

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.***

05. On the other hand, learned counsel for the respondents support the impugned award and submit that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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 claimants have pleaded that the deceased was earning Rs.6,000/- per month as Mason 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 at the relevant time. Further, considering the age of the deceased i.e. 23 years, the dependency i.e. mother and minor brothers, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma & 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.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 18 to be applied	Rs.9,07,200/-
05.	Towards loss of estate and funeral expenses	Rs.30,000/-
	Total compensation	Rs.9,37,200/-

Since the Tribunal has already awarded Rs.1,90,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.7,47,200/- 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