

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 620 of 2016**

1. Jodhi Ram Mandavi, aged about 60 years, S/o Late Chamraram,
2. Smt. Devantinbai, aged about 55 years, W/o Jodhiram Mandavi,
3. Ku. Divya Mandavi, aged about 10 years, D/o Late Ganesh Ram Mandavi,
4. Deepak Kumar aged about 8 years, S/o Late Ganesh Ram Mandavi,
5. Ku. Heena Mandavi, aged about 6 years, D/o Ganeshram Mandavi,

Appellant No. 3 to 5 being minor, through Guardian Jodhi Ram Mandavi, aged about 60 years, S/o Late Chamraram,

All by Caste Gond, R/o Bhirawahi, Tahsil Durgukondal, Police Chowki Kacche Thana, Bhanupratappur, Distt.- Uttar Bastar Kanker.

---- Appellants/ Claimants

Versus

1. Vimal Kumar Sahu, aged about 20 years, S/o Baldev Sahu, R/o Markatola, Thana Dondi, Distt.- Balod, C.G.,
2. Smt. Laxmi, Bai, W/o Late Ishwari Prasad R/o Khamartola, Thana Dallirajhara Distt.- Balod C.G. (Van Maruti Omni No. C.G. 07 MA 8537).
3. National Insurance Company Ltd. First Floor Gill Complex, Near Gurudwara, Station Road Durg C.G.

-----Respondents

For Appellants	:Shri Shalvik Tiwari, Advocate.
For Respondent No.1 & 2	:Shri Amit K. Sahu, Advocate.
For Respondent No.3	:Shri Anil Gulati, Advocate.

Hon'ble Shri Gautam Chourdiya, J
Judgment On Board

12.03.2019

This appeal is by the claimants against the award dated 27.01.2016, passed by Additional Motor Accidents Claims Tribunal, Bhanupratappur, District- Uttar Bastar, Kanker, C.G. in Claim Case

No.18/2015 awarding total compensation of Rs. 3,75,600/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant Nos. 1,2 &3 jointly and severely.

02. As per claim petition, on 11.02.2015, deceased Ganesh Ram Mandavi, aged about 30 years, earning Rs.15,000/- per month by work of agriculture & work of stitching died in the motor vehicle accident caused due to rash and negligent driving of vehicle(Maruti Omini Van) bearing registration No. CG07-MA/8537 by non-applicant No.1 Vimal Kumar Sahu. The offending vehicle is owned by non-applicant No. 2- Smt. Laxmi Bai and insured with non-applicant No. 3 National Insurance Company Ltd.

03. On claim petition being filed by the claimants/parents & children of the deceased- Ganesh Ram Mandavi 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 appellants/claimants submits as under:

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs. 4,000/-per month i.e. Rs. 48,000/- per annum whereas looking to his work and the time when accident occurred i.e. in the year 2015 as skilled person the income of the deceased should have been considered as Rs. 6,000/-pm.

(ii) that multiplier of 9 has wrongly been applied and considering the age of the deceased, i.e. 30 years it should have been 17 instead of 9.

(iii) 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.

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.

05. On the other hand, learned counsel for the respondent no. 3/insurance company submits that He further submits that the Tribunal was also not justified in deducting 1/5th towards personal & living expenses of the deceased and considering the facts that the number of claimants are 5 in this case and as per Apex Court Judgment in the matter of **Sarla Verma (Supra)** the Tribunal should have been deducted 1/4rd towards personal & living expenses. He further submits that except deduction part towards personal & living expenses, the Tribunal considering the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

06. No counter appeal is filed as submitted by both the parties.

07. Heard learned counsel for the parties and perused the award impugned.

08. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.6,000/- per month by work of agriculture & work of stitching 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 can safely be taken as Rs.5,000/- per month as per minimum wages at the relevant time. At the time of accident, the age of the deceased was 30 years, as per Apex Court Judgment in the matter of **Sarla Verma (Smt.)** the multiplier of 17 would be applicable instead of 9. In this case number of claimants are five, therefore, in view of the Apex Court Judgment in the matter of **Sarla Verma (Smt)**, there has to be 1/4th deduction towards personal & living expenses of the deceased and the Tribunal was not justified in deducting 1/5th. Further, considering the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in **Sarla Verma, Pranay Sethi, 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. 5,000/- per month.	Rs. 5,000x12= Rs.60,000/- per annum
02.	40% of (1) above to be added towards future prospects.	Rs. 60,000+24,000/-= Rs. 84,000/-
03.	After 1/4th deduction towards personal and living expenses of the deceased	Rs.84,000- 21,000= Rs. 63,000/-
04.	Multiplier of 17 to be applied	Rs. 1071,000/-
05.	Towards loss of estate and funeral expenses	Rs. 30,000/-
06.	Towards loss of filial consortium to respondent No. 1 & respondent No. 2 (Rs. 10,000/-each).	Rs. 20,000/-
07.	Towards parental consortium to respondent Nos. 1, 2 and 3 (Rs. 15,000/- each).	Rs. 45,000/-
08.	Total compensation	Rs. 11,66,000/-

Since the Tribunal has already awarded Rs. 3,75,600/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.7,90,400/- 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