

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1387 of 2017**

1. Smt. Chandani Bai w/o Late Dharmesh Kummar Ratre, aged about 30 years.
2. Vidhya Shankar, S/o Late Dharmesh Kummar Ratre, aged about 13 years.
3. Ku. Shandhya D/o Late Dharmesh Kummar Ratre, aged about 11 years.
4. Navin Kumar S/o Late Dharmesh Kummar Ratre, aged about 09 years.
5. Vasuray S/o Late Dharmesh Kummar Ratre, aged about 04 years.
6. Ku. Radhika D/o Late Dharmesh Kumar Ratre, aged about 03 years.
7. Ram Prasad S/o Manrakhan Ratre, aged about 65 years.

Appellant nos. 2 to 6 are minor through his legal guardian Mother Smt. Chandani Bai. All are R/o Village Rajpalpur Thana & Tahsil Lormi District Munngeli, Chattisgarh.

---- Appellants/Claimants**Versus**

1. Rajanikant @ Chhotu S/o Naraya Kahar, aged about 28 years.
(Driver of the offending vehicle Car No. CG10/NA/2427)
R/o Shanichari Bazar Chatidih, Bilaspur, C.G.
2. Virendra Kumar S/o Samaylal Kahar aged about 32 years
(Owner of the offending vehicle Car No. CG10/NA/2427) R/o
Chatidih Ramayan Chowk Bilaspur, District Bilaspur, C.G.
3. The New India Insurance Company Limited, Rama Tred Center
Old Bus Stand Bilaspur, District Bilaspur, C.G.

---- Respondents

For Appellants	:	Shri A.L. Singroul, Advocate.
For Respondent No.1 & 2	:	Shri Devesh G. Kela, Advocate.
For Respondent No.3	:	Shri Shivendu Pandya, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board**19.02.2019**

1. This appeal is by the claimants against the award dated 31.07.2017 passed by Additional Member Mungeli to Additional Motor Accident Claims Tribunal, Mungeli District Mungeli, Chhattisgarh, in Claim Case No.35/2016 awarding total compensation of Rs. 12,86,800/- with interest @ 7.5 per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.
2. As per claim petition, on 26.4.2016 deceased Dharmesh Kumar Ratre, aged about 34 years, earning Rs.13,000/- per month as Mason and was also doing the tiles fitting work, died in the motor vehicular accident caused due to rash and negligent driving of car bearing registration no. CG10/NA/2427 by non-applicant No.1, owned by non-applicant no.2 and insured with non-applicant no.3.
3. On claim petition being filed by the claimants i.e. wife, children and father under Section 166 of the Motor Vehicles Act to the tune of Rs.44,50,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
4. Learned counsel for the appellants/claimants submits only on the sole ground that income of the deceased has wrongly been considered by the Tribunal as Rs.4,500/- whereas it should have been Rs.7,000/- per month.
5. On the other hand, learned counsel for the respondents supports the impugned award and submits that the Tribunal considering all

the relevant aspects of the matters has rightly considered the income of the deceased but erred in awarding 50% towards future prospect as the deceased was a self-employed person, 40% prospect prospect should have been considered.

- 6. Heard learned counsel for the parties and perused the material available on record.
- 7. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.13,000/- per month as Mason and was also doing the tiles fitting work 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.6,000/-per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 34 years, the dependency i.e. 7, the nature of his job and 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.**, the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.6,000/- per month.	Rs.72,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs.28,800/- Rs.72,000 + Rs.28,800 = Rs.1,00,800/-

03.	1/5 deduction towards personal and living expenses of the deceased	Rs.20,160/- Rs.1,00,800 – Rs.20,160 = Rs.80,640/-
04.	Multiplier of 16 to be applied	Rs.12,90,240/-
05.	Towards Funeral Expenses	Rs.25,000/- (as awarded by the Tribunal)
06.	Towards Love and Affection	Rs.1,50,000/- (as awarded by the Tribunal)
07.	Towards loss of consortium	Rs.50,000/- (as awarded by the Tribunal)
08.	Towards loss of estate	Rs.25,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.15,40,240/-

Since the Tribunal has already awarded Rs.12,86,800/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,53,440/- with interest 7.5% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh