

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 482 of 2015

1. Smt. Sanga Das Vaishnav W/o Late Mana Das @ Purndhar Das Vaishnav, Aged about 42 years, Occupation- House wife
2. Sanjeet Das Vaishnav S/o Late Mana Das @ Purndhar Das Vaishnav, Aged about 22 years
3. Ku. Sarita D/o Late Mana Das @ Purndhar Das Vaishnav, Aged about 17 years

Respondent No.3 Minor Through Natural Guardian Mother Smt. Sanga Das Vaishnav, All are R/o Village- Bhathal (Chhaminda), P.S. Jujumuda, Tahsil & District- Sambalpur (Orissa) Present Address- Village- Jamgala, P.S. & Tehsil Lakhanpur, District Surguja (C.G.)

---- Appellants/Claimants

Versus

1. Jeet Kumar @ Ajeet Yadav S/o Chaituram Yadav, Aged about 36 years, Occupation- Driver, R/o Village- Jamgawaon, P.S.- Darima, District Surguja (C.G.)

(Driver of the offending vehicle Bus bearing registration No. CG-04/A/0869)/Non-applicant No.1

2. Bachcha Lal Gupta S/o Late Raghubir Prasad Gupta, Occupation- Owner, R/o Village- Badadamali, Post- Nandamali, P.S. Darima, District Surguja (C.G.)

(Owner of the offending vehicle Bus bearing registration No. CG-04/A/0869)/Non-applicant No.2

3. Branch Manager the Oriental Insurance Company Limited, Branch Office Manendragarh Road Ambikapur, Tehsil- Ambikapur, District Surguja (C.G.)

(Insurer of offending vehicle Bus bearing registration No. CG-04/A/0869)/Non-applicant No.3

4. Ajesh Giri S/o Late Rajendra Giri, R/o Village- Sohaga, Post- Karji, P.S. Darima, District Surguja (C.G.) - **Non-applicant No. 4**

5. National Insurance Company Ltd. Mandal Office B-1, Taha Complex 1st Floor Ring Road No.1 Priyadarshani Nagar, Bilaspur, District Bilaspur (C.G.) - **Non-applicant No. 5**

---- Respondents/Non-applicants

For Appellants	:	Shri A.N. Pandey, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Nilkanth Malviya, Advocate
For Respondent No.4	:	None
For Respondent No. 5	:	Shri Anil Gulati, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.02.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the Third Motor Accident Claims Tribunal, Ambikapur, Surguja (C.G.) vide award dated 02.02.2015 passed in M.A.C.C. No. 13 of 2013.

2. The Claimants/Appellants, unfortunate wife, son and daughter of deceased- Mana Das @ Purndhar Das Vaishnav, claimed compensation of Rs.16,55,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of deceased- Mana Das @ Purndhar Das Vaishnav in the motor accident.

3. Brief facts of the case are that on 20.04.2013 when deceased- Purndhar Das Vaishnav was riding motorcycle of non-applicant No.4 – Ajesh Giri and his son-in-law- Bharat Kumar Vaishnav was sitting as pillion rider, the said motorcycle was dashed by a Bus bearing registration No. CG-14/A/0869 (hereinafter referred to as 'offending vehicle') near Khara-Culvert which at the relevant time being driven by non-applicant No.1- Jeet Kumar @ Ajeet Yadav, owned by non-applicant No.2 - Bachcha Lal Gupta and duly insured with non-applicant No. 3 – Oriental Insurance Company Limited. In the said accident, both Purndhar Das Vaishnav and Bharat Kumar Vaishnav sustained grievous injuries and both of them succumbed to those injuries on spot. At the time of accident, deceased was aged about 45 years and earning Rs.10,000/- per month as Carpenter.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.5,24,000/- in favour of the Appellants/Claimants with interest @ 6% per annum from the date of application till realization and has fastened liability on non-applicants No. 1 to 3.

5. Learned counsel for the Appellants/Claimants submits that income of the deceased has wrongly been considered by the Tribunal as Rs.4,500/- per month whereas it should have been Rs.10,000/-. 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 the lower side deserves to be enhanced suitably. In support of above contentions, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**.

6. On the other hand, learned counsel for the Respondents/Insurance Companies supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

7. As regards income of the deceased, the Claimants have pleaded that the deceased was earning Rs.10,000/- per month as Carpenter 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.5,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 45 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** and *Pranay Sethi* (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.5,000/- per month	Rs.60,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.60,000/- + Rs.24,000/-) Rs.84,000/-
3.	1/3rd deduction towards personal and living expenses of Deceased	(Rs.84,000/- – Rs.28,000/-) Rs.56,000/-
4.	Multiplier of 14 applied	Rs.56,000/- x 14 = Rs.7,84,000/-
5.	Towards loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	Rs.8,54,000/-

- 8.** Since the Tribunal has already awarded Rs.5,24,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.3,30,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.
- 9.** In the result, the appeal is allowed in part with modification in the impugned award to the above extent.
- 10.** No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge