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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 654 of 2014

1. Rukmani Bai W/o late Dharmendra Sahu, Age about 26 years, Occupation labour, R/o Village- Ramtala, Thana Pandariya, P.S. Pandariya, District Kabirdham (C.G.)
2. Roop Nath, age about 7 years, S/o Dharmendra Sahu (minor) through-mother Rukmani Sahu, R/o Village- Ramtala, Thana Pandariya, P.S. Pandariya, District Kabirdham (C.G.)
3. Sheetla Bai, age about 3 years, D/o Dharmendra Sahu (minor) through mother Rukmani Sahu, R/o Village- Ramtala, Thana Pandariya, P.S. Pandariya, District Kabirdham (C.G.)
4. Rupeswari Bai, age about 6 months, D/o Dharmendra Sahu (minor) through-mother Rukmani Sahu, R/o Village- Ramtala, Thana Pandariya, P.S. Pandariya, District Kabirdham (C.G.)
5. Samliya Sahu S/o Hagru Sahu, aged about 60 years, R/o Village Ramtala, Thana Pandariya, P.S. Pandariya, District Kabirdham (C.G.)
6. Kumariya Bai W/o Samliya Sahu, age about 55 years, R/o Village- Ramtala, Thana Pandariya, P.S. Pandariya, District Kabirdham (C.G.)
7. Prema Bai W/o Samliya Sahu, age about 40 years, (Handicapped), R/o Village- Ramtala, Thana Pandariya, P.S. Pandariya, District Kabirdham (C.G.)

---- Appellants/Claimants

Versus

1. Kumaru Sahu, age about 30 years S/o kantram Sahu, occupation Farmer, R/o Village- Kanpadhanh, Thana Padariya, District Kabirdham (C.G.)

(Driver and owner of vehicle Tractor)/Non-applicant No.1

2. IFFCO TOCLO General Insurance, 3rd Floor Shop No. 345-347 Lal Ganga Shopping Mall, G.E. Road Raipur (C.G.)

(Insurer of Tractor)/Non-applicant No. 2

3. Suresh Kumar Chandervanshi, age about 40 yrs, S/o Gandlal Chandervanshi, Occupation Farmer, R/o Village Kishungarh, Thana Padariya, District Kabirdham (C.G.)

(Owner of the Marshal)/Non-applicant No.3

4. IFFCO TOCLO General Insurance, 3rd Floor Shop No. 345-347 Lal Ganga Shopping Mall, G.E. Road Raipur (C.G.)

(Insurer of the Marshal vehicle)/Non-applicant No. 4

---- Respondents/Non-applicants

For Appellants/Claimants	:	Shri B.S. Rajput, Advocate
For Respondents/ Insurance Company	:	Shri K. Rohan, Advocate appears on behalf of Shri Amrito Das, Advocate
For other Respondents	:	None

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 Motor Accident Claims Tribunal, Kabirdham (Kawardha), C.G. vide award dated 24.03.2014 passed in M.A.C.C. No. 25 of 2009.

2. The Claimants/Appellants, unfortunate wife, son, daughters, mother, father and sister of deceased- Dharmendra Sahu, claimed compensation of Rs.21,10,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of deceased- Dharmendra Sahu in the motor accident.

3. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.3,67,000/- in favour of the Appellants/Claimants with interest @ 7.5% per annum from the date of application till realization and has fastened liability on non-applicants No. 1 & 2.

4. The facts of the case, in brief, are that on 01.10.2008, deceased- Dharmendra Sahu along with Suresh Kumar Chandravanshi/non-applicant No.3 and three other were coming from Swantpur to Kishungarh by the Marshall vehicle bearing registration No. CG-07 0552, at that time near Village Kampadhah pond, non-applicant No.1- Kumaru Sahu driven the vehicle- Tractor bearing registration No. CG-10/A/1014 attached with Trolley bearing registration No. CG-10/A/1015 in a rash and negligent manner and dashed the Marshall. Due to the said accident, Dharmendra sustained grievous injuries and succumbed to those injuries.

5. Learned counsel for the Appellants/Claimants submits that the deceased was a driver but the Claimants have not filed any document with regard to income of the deceased, the Tribunal has considered the income of the deceased as Rs.100/- per day as a labour and assessed the monthly income of the deceased as

Rs.2,500/- on the basis of 25 days working in a month which is on the lower side. He further submits that there are seven dependents upon the deceased and the Tribunal has wrongly deducted 1/3rd towards personal and living expenses of the deceased whereas it should have been 1/5th. 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 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*** and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

6. On the other hand, learned counsel for the Respondents/Insurance Companies opposes the contention made by learned counsel for the Appellant and supports the impugned award except the application of multiplier. He submits that as per postmortem report (Ex.-P/6), the Tribunal has considered the age of deceased as 26 years and has wrongly applied the multiplier of 18 whereas it should have been 17 in view of the decisions of Hon'ble Supreme Court in the matter of *Smt. Sarla Verma* (supra).

7. Heard learned counsel for the parties and perused the material available on record.

8. As regard income of the deceased, the Claimants have pleaded that the deceased was earning Rs.4,000/- per month as driver 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.100/- per day i.e. Rs.3,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 26 years, the dependency i.e. seven, the nature of his job and the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma* and *Pranay Sethi* (supra), the Claimants are

held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.3,000/- per month	Rs.36,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.36,000/- + Rs.14,400/-) Rs.50,400/-
3.	1/5rd deduction towards personal and living expenses of Deceased	(Rs.50,400/- – Rs.10,080/-) Rs.40,320/-
4.	Multiplier of 17 applied	Rs.40,320/- x 17 = Rs.6,85,440/-
5.	Conventional heads:- Towards loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	Rs.7,55,440/-

9. Since the Tribunal has already awarded Rs.3,67,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.3,88,440/- 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.

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

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge