

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1215 of 2015

1. Smt. Dewkunwar W/o Late Sher Singh Markam, aged about 53 years
2. Gautam S/o Late Sher Singh Markam, aged about 20 years
3. Faguram S/o Late Sher Singh Markam, aged about 16 years

Appellant No.03 is minor through the mother (natural guardian) appellant No.1 Smt. Dewkunwar W/o Late Sher Singh Markam, All R/o Village- Thakurkapa, Post Sagar, Police Station – Hirri, Tahsil & District (Revenue and Civil) Bilaspur (C.G.)

---- Appellants/Claimants

Versus

- Chief Manager, I.C.I.C.I. Lumbard General Insurance Company Limited, 414 Veer Sawarkar Marg, near Prabha Devi Siddhi Vinayak Temple, Mumbai-400025

---- Respondent/Non-applicant

For Appellants/ Claimants	:	Shri Anand Kesharwani, Advocate
For Respondent/ Insurance Company	:	Ms. Pratibha Das, Advocate appears on of Shri Amrito Das, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

16.04.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of compensation awarded by the Member, Seventh Upper Motor Accident Claims Tribunal, Bilaspur (C.G.) vide award dated 22.08.2015 in Claim Case No. 558 of 2014.
2. The Appellants/Claimants, unfortunate mother and brothers of deceased- Tarachand, claimed compensation of Rs.4,90,000/- by filing a claim petition under Section 163-A of the Motor Vehicles Act, 1988 for death of Tarachand in the vehicular accident.
3. Brief facts of the case are that on 12.04.2014, deceased- Tarachand was going along with his brother Ganesh Ram from village Thakurkapa to Chakarbhatha for doing the work of plumber by motorcycle bearing registration No. CG-10/P/1538 as a pillion rider and when they reached near Chhattisgarh High

Court Bilaspur and were waiting to cross the road on the Bilaspur Raipur Highway, at that time from wrong side one unknown vehicle dashed the motorcycle. As a result thereof, Tarachand and Ganesh Ram both sustained grievous injuries and were taken to hospital by 108 Sanjivani Ambulance to CIMS Bilaspur where both were declared dead.

4. The learned Tribunal, in the impugned award, has awarded a total compensation of Rs.3,00,400/- in favour of the Appellants/Claimants with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant to pay compensation to the Claimants.

5. Learned counsel for the Appellants/Claimants raises only two grounds i.e. *first-* considering the age of mother of the deceased, the multiplier of 11 has wrongly been applied by the Tribunal whereas as per merg intimation (Ex.-P/4) and postmortem report (Ex.-P/5), the age of the deceased was mentioned as 28 years at the time of accident, therefore, the multiplier should have been 17. *Second-* the amount awarded by the Tribunal under the conventional heads also being on the lower side deserves to be enhanced suitably.

6. On the other hand, learned counsel for the Insurance Company/non-applicant 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. Heard learned counsel for the parties and perused the material available on record.

8. It is not in dispute that at the time of accident, motorcycle bearing registration No. CG-10/P/1538 was duly insured with non-applicant/Insurance Company and the accident occurred arising out of the use of motorcycle.

9. In the present case, the deceased was a plumber aged about 28 years. As per Second Schedule of Section 163-A of the Motor Vehicles Act, the Tribunal has rightly considered the monthly income of the deceased as Rs.3,300/- per month and has rightly deducted 1/3rd towards personal & living expenses of the

deceased.

10. So far as arguments relating to application of wrong multiplier and grant of low amount under the conventional heads are concerned, considering the age of the deceased i.e. 28 years, the dependency, the nature of job, the Second Schedule under Section 163-A of the Motor Vehicles Act, 1988 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 **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, the Appellants/Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (in rupees)
01	Income of the deceased @ Rs.3,300/- per month	Rs.39,600/- per annum
02	1/3rd deduction towards personal and living expenses of the deceased	(Rs.39,600/- – Rs.13,200/-) Rs.26,400/-
03	Multiplier of 17 to be applied	Rs.26,400/- x 17 = Rs.4,48,800/-
04	Conventional heads: Loss of estate and funeral expenses	Rs.30,000/-
	Total Compensation	Rs.4,78,800/-

Since the Tribunal has already awarded Rs.3,00,400/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.1,78,400/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

12. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge