

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1494 of 2015

1. Smt. N. Sunaina Wd/o Late Nag Danteshwar Rao, Aged About 32 Years
2. Miss N. Geetanjali D/o Late Nag Danteshwar Rao, Aged About 8 Years
3. Master N. Rohit S/o Late Nag Danteshwar Rao, Aged About 2 Years

Appellants No. 2 to 3 are minor through their mother Smt. N. Sunaina (appellant No.1). All are resident of Shanti nagar Ward Jagdalpur, Distt. Bastar (CG)

---- Appellants/claimants

Versus

1. Nitesh Kumar @ Nukesh Kumar Sahu S/o Ajit Ram Sahu, Aged About 23 Years R/o Village Satmara, P. S. Rani Chirai District Balod Chhattisgarh....Driver,
2. Prasad And Company Through M. Prasad S/o M. S. Naidu, Aged About 26 Years Senior Engineer / Site In Charge Nagarnar Present Address Vrindavan Colony P. S. Kotwali Jagdalpur, District Bastar Chhattisgarh.....Owner,
3. The Branch Manager United India Insurance Co. Ltd. Office Anupama Chowk Jagdalpur, District Bastar Chhattisgarh.....Insurance Co.
4. N. V. R. Subramanyam S/o N. Koteswar Rao, Aged About 65 Years
5. Smt. N. Meera W/o N. V. R. Subramanyam, Aged About 60 Years

Both R/o At Sarvvaram Madhopatanam Colony Door N. 1/61, Tahsil Kaninada, District East Godawari A. P.....Non Claimants,

---- Respondents

For Appellants	:	Shri PK Tulsyan, Advocate.
For Respondent No.3	:	Smt. Chitra Shrivastava, Adv.
For others Respondents	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

22/02/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award 21st October, 2014 passed by Motor Accident Claims Tribunal, Bastar at Jagdalpur in Claim Case No. 77/2013 awarding total compensation of Rs.3.90 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company.

02. As per claim petition, on 9.4.2012 deceased Nag Danteshwar Rao, 35 years of age, earning Rs.15,000/- per month as a photographer in Mod Creations and through other computer work, was going on his motorcycle bearing No. CG 17 J 3866. However, on the way, his vehicle was dashed by Bolero bearing No. MP 21 N 9549 which was being driven by non-applicant No.1 in a rash and negligent manner. As a result thereof, Nag Danteshwar Rao suffered grievous injuries, he was taken to hospital for treatment, however, he was declared brought dead there. At the time of accident, the offending vehicle was owned by non-applicant No.1 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants, wife and two minor children, under Section 166 of the Motor Vehicles Act wherein the father and mother of the deceased were also incorporated as non-applicants No. 4 & 5, the Tribunal considering the evidence led by 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.36,000/- per annum whereas as per evidence adduced by the claimants in the form of passbook of the deceased, bank statement and other oral evidence, it is evident that the deceased was earning Rs.15,000/- per month.

(ii) that no amount towards future prospect has been granted to the

claimants and considering the age of the deceased i.e. 39 years, 40% of the annual income should have been awarded towards future prospect.

(v) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. No amount towards loss of parental consortium has been awarded.

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, and 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/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

06. No counter appeal has been filed by the respondents as submitted by counsel for the parties.

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

08. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.15,000/- per month as but the evidence adduced by them in support thereof is not sufficient to establish the income of the deceased. 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 of skilled labour. Further, considering the age of the deceased i.e. 39 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi, and 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.6,000/- per month.	72,000/- per annum
02.	40% of (i) above to be added towards future prospects.	72,000 + 28,800 = 1,00,800/-
03.	1/3rd deduction towards personal and living expenses of the deceased	1,00,800 – 33,600 = 67,200/-
04.	Multiplier of 15 to be applied	10,08,000/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses	70,000/-
06.	Towards loss of parental consortium to claimants No. 2 & 3 @ Rs.15,000/- each.	30,000/-
	Total :	11,08,000/-

Since the Tribunal has already awarded Rs. 3.90 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.7,18,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/
(Gautam Chourdiya)
Judge