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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1367 of 2017

1. Ajay Lahre S/o Pramod Lahare, aged about 25 years
2. Pramod Lahare S/o Babulal Lahare, aged about 49 years
3. Urvashi W/o Pramod Lahare, aged about 44 years

All are R/o Village – Khaira, Post Setganga, Police Chowki Fastarkpur, Tahsil and District Mugeli (C.G.)

---- Appellants/Claimants

Versus

1. Resham Singh S/o Buta Singh, aged about 44 years (Driver of the offending vehicle Truck No. M.H. No. 35 K. 5511) R/o Behind of R.T.O. Office House of Gondiya Fulchurtola Gondiya Maharashtra
(Driver)
2. Shekh Ramij Ahmad S/o Sagir Ahmad, aged about 55 years (Owner of the offending vehicle Truck No. M.H. No. 35 K. 5511) R/o Near Progressive Convent School Gondiya Maharashtra
(Owner)
3. The New India Insurance Company Limited, Rama Trade Center, Bilaspur, District Bilapur (C.G.)
(Insurer)

---- Respondents/Non-applicants

Miscellaneous Appeal (Civil) No. 1368 of 2017

1. Ashok Kumar S/o Late Babu Lal Lahre, aged about 43 years
2. Ku. Nandani D/o Ashok Kumar Lahare, aged about 18 years
3. Durgesh Kumar S/o Ashok Kumar Lahare, aged about 16 years
4. Ajeet S/o Ashok Kumar Lahare, aged about 14 years

Appellant No. 3 & 4 are minor through her legal guardian Ashok Kumar Lahare

All are R/o Village Khaira, Post Setganga Police Chowki, Fastarpur, Tahsil and District Mungeli (C.G.)

---- Appellants/Claimants

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(Owner)
3. The New India Insurance Company Limited, Rama Trade Center, Bilaspur, District Bilapur (C.G.)
(Insurer)

---- Respondents/Non-applicants

And

Miscellaneous Appeal (Civil) No. 1373 of 2017

1. Mahendra Mehar S/o Late Madho Prasad Mehar, aged about 34 years
2. Ku. Rani Mehar D/o Mahendra Mehar, aged about 13 years
3. Ku. Damini Mehar D/o Mahendra Mehar, aged about 11 years
4. Ku. Mala Mehar D/o Mahendra Mehar, aged about 09 years
5. Arman Mehar S/o Mahendra Mehar, aged about 06 years

Appellant No. 2 to 5 are minor through his legal guardian father Mahendra Mehar

All are R/o Village – Khaira, Post Setganga, Police Chowki Fastarkpur, Tahsil and District Mungeli (C.G.)

---- Appellants/Claimants

Versus

1. Resham Singh S/o Buta Singh, aged about 44 years (Driver of the offending vehicle Truck No. M.H. No. 35 K. 5511) R/o Behind of R.T.O. Office House of Gondiya Fulchurtola Gondiya Maharashtra
(Driver)
2. Shekh Ramij Ahmad S/o Sagir Ahmad, aged about 55 years (Owner of the offending vehicle Truck No. M.H. No. 35 K. 5511) R/o Near Progressive Convent School Gondiya Maharashtra
(Owner)
3. The New India Insurance Company Limited, Rama Trade Center, Bilaspur, District Bilapur (C.G.)
(Insurer)

---- Respondents/Non-applicants

For Appellants/Claimants	:	Shri A.L. Singroul, Advocate
For Respondents 1 & 2/ Driver & Owner	:	None
For Respondent No.3/ Insurance Company	:	Shri Qamrul Aziz, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

11.02.2019

1. As all these above appeals arise out of the same accident occurred on 27.12.2016 involving the same vehicle Truck bearing registration No. MH-35/K/5511 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.

2. All these appeals arise out of common awards dated 28.08.2017 by the Additional Member, Mungeli to the Additional Motor Accident Claims Tribunal, Mungeli (C.G.) in M.A.C.C. No. 25 of 2017; M.A.C.C. No. 23 of 2017 and M.A.C.C. No. 24 of 2017 awarding compensation in favour of the Claimants of Rs.7,73,000/-;

Rs.6,76,000/- and Rs.8,23,000/- with interest @ 7.5% per annum from the date of claim applications till realization respectively fastening liability on the non-applicants 3 along with non-applicants No. 1 and 2 jointly and severally.

3. Non-applicant No.1 – Resham Singh is driver, non-applicant No.2 – Shekh Ramij Abmad is owner and non-applicant No.3 – Insurance Company is insurer of the offending vehicle.

4. Facts of the case, in brief, are that deceased- Punita Bai aged 23 years was wife of Ajay Lahre – Claimant No.1 in M.A.C.C. No. 25/2017; deceased- Rajkumari Bai aged 39 years was wife of Ashok Kumar – Claimant No. 1 in M.A.C.C. No. 23/2017 and deceased- Durpat Bai aged 29 years was wife of Mahendra Mehar- Claimant No. 1 in M.A.C.C. No. 24/2017. Further facts of the case are that on 27.12.2016 when deceased persons namely- Punita Bai, Rajkumari Bai and Durpat Bai were coming from village Khaira after harvesting the sugarcane, non-applicant No.1- Resham Singh driver of the offending vehicle driving the said vehicle in a rash and negligent manner dashed the deceased persons- Punita Bai, Rajkumari Bai and Durpat Bai, as a result thereof, they sustained grievous injuries on their heads and other parts of the bodies. Deceased persons were referred to CIMS Hospital where during treatment deceased- Punita Bai died on 30.12.2016, deceased- Rajkumari Bai died on 28.12.2016 and deceased- Durpat Bai died on 01.01.2017.

5. No counter appeal has been filed by the Respondents as submitted by the learned counsel for both the parties.

6. Learned counsel for the Claimants/Appellants submits that the accident occurred in the month of December, 2016, the deceased persons were doing the work labour and agriculture and were earning Rs.8,000/- per month respectively. Even, as per minimum wages prevalent at that time their monthly income ought to have been taken at Rs.6,000/- but the Tribunal has considered the same as Rs.3,000/- per month each deceased which appears to be on the lower side. He further submits that in M.A.C.C. No. 23/2017, the Tribunal has considered the age

of deceased- Rajkumari Bai in between 36 to 40 and has granted 30% future prospects, it should have been 40% in view of the decision in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***

7. Learned counsel for Respondent No 3, however, opposes the appeal and submits that in M.A.C.C. No. 25/2017 and M.A.C.C. No. 24/2017, the Tribunal has considered the age of deceased- Punita Bai in between 18 to 25 and deceased- Durpat Bai in between 31 to 35 and has granted 50% future prospects respectively whereas it should have been 40% in view of the decision in the matter of *Pranay Sethi* (supra) and the learned Tribunal has already awarded higher amounts under other permissible heads and has rightly assessed the income of the deceased persons respectively, therefore, it is just and reasonable, which does not call for any interference in the instant appeal.

8. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of the Claims Tribunal.

9. As regards income of the deceased persons, the Claimants have pleaded that the deceased persons were earning Rs.8,000/- per month each by doing the work of labour and agriculture but no documentary evidence in support thereof has been adduced that the deceased persons were actually earning Rs.8,000/- per month respectively at the time of accident. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased persons are considered as Rs.6,000/- per month each as per minimum wages at the relevant time, considering the age of the deceased- Punita Bai in between 18 to 25, deceased- Rajkumari Bai in between 36 to 40 & deceased- Durpat Bai in between 31 to 35 as considered by the Tribunal, the dependency, the nature of their jobs and the decisions of the Hon'ble Supreme Court in *Pranay Sethi* (supra) and ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, the Claimants/Appellants are held entitled for compensation in the following manner:-

(A) In M.A.(C) No. 1367 of 2017 arising out of M.A.C.C. No. 25 of 2017:

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.6,000/- per month i.e. Rs.72,000/- per annum
2	40% towards future prospects added to income	(Rs.72,000/- + 28,800/-) Rs.1,00,800/-
3	1/3rd deduction towards personal expenses of the deceased	(Rs.1,00,800/- – Rs.33,600/-) Rs.67,200/-
4	After multiplier of 18 applied	Rs.67,200/- x 18 = Rs.12,09,600/-
5	Towards loss of spousal consortium to Claimant No.1	Rs.50,000/- (as awarded by the Tribunal)
6	Towards loss of other consortium and parental consortium @ Rs.25,000/- to Claimants No.2 & 3 each	Rs.50,000/- (as awarded by the Tribunal)
7	Towards funeral expenses	Rs.25,000/- (as awarded by the Tribunal)
	Total Compensation:	Rs.13,34,600/-

Since the Tribunal has already awarded Rs.7,73,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.5,61,600/- with interest as awarded by the Tribunal.

(B) In M.A.(C) No. 1368 of 2017 arising out of M.A.C.C. No. 23 of 2017:

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.6,000/- per month i.e. Rs.72,000/- per annum
2	40% towards future prospects added to income	(Rs.72,000/- + 28,800/-) Rs.1,00,800/-
3	1/4th deduction towards personal expenses of the deceased	(Rs.1,00,800/- – Rs.25,200/-) Rs.75,600/-
4	After multiplier of 15 applied	Rs.75,600/- x 15 = Rs.11,34,000/-
5	Towards loss of spousal consortium to Claimant No.1	Rs.50,000/- (as awarded by the Tribunal)
6	Towards loss of parental consortium @ Rs.25,000/- to Claimants No.2, 3 & 4 each	Rs.75,000/- (as awarded by the Tribunal)
7	Towards funeral expenses	Rs.25,000/- (as awarded by the Tribunal)
	Total Compensation:	Rs.12,84,000/-

Since the Tribunal has already awarded Rs.6,76,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.6,08,000/- with interest as awarded by the Tribunal.

(C) In M.A.(C) No. 1373 of 2017 arising out of M.A.C.C. No. 24 of 2017:

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.6,000/- per month i.e. Rs.72,000/- per annum
2	40% towards future prospects added to income	(Rs.72,000/- + 28,800/-) Rs.1,00,800/-
3	1/4th deduction towards personal expenses of the deceased	(Rs.1,00,800/- – Rs.25,200/-) Rs.75,600/-
4	After multiplier of 16 applied	Rs.75,600/- x 16 = Rs.12,09,600/-
5	Towards loss of spousal consortium to Claimant No.1	Rs.50,000/- (as awarded by the Tribunal)
6	Towards loss of parental consortium @ Rs.25,000/- to Claimants No.2, 3, 4 & 5 each	Rs.1,00,000/- (as awarded by the Tribunal)
7	Towards funeral expenses	Rs.25,000/- (as awarded by the Tribunal)
	Total Compensation:	Rs.13,84,600/-

Since the Tribunal has already awarded Rs.8,23,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.5,61,600/- with interest as awarded by the Tribunal.

10. In the result, the above appeals filed by the Claimants are allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge