

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 1319 of 2000**

1. Mamta D/o Late Shri Gautam Nishad, aged about 1½ Years, (Minor)
2. Dhaleshwar S/o Late Gautam Nishad, aged about 6 years, (Minor)

Both are R/o near Lal Khadan, Bilaspur, Tehsil and District Bilaspur (C.G.) Through the legal guardian (Bali) Brijlal S/o Budhram

3. Brijlal S/o Budhram, aged about 40 years, R/o Khuntaghat, P.O. Gadwat, District Bilaspur (C.G.)

---- Appellants/Claimants

Versus

1. Sushil Kumar Malhotra (Died), S/o Shri J.N. Malhotra, aged about 40 years R/o Near Tifra Fatak, Raipur Road, Bilaspur (C.G.) (Name of respondent No. 1 deleted as per Hon'ble Court's Order dated 27/08/2013)
2. M/s J.H. Parpiya and Company through its competent Officer, B.N. Railway Station Sevaliya, District Khedha (Gujarat)
3. The Oriental Insurance Company Limited, Dayalband, Bilaspur (C.G.) 543
4. The New India Insurance Co. Ltd., Rajendra Nagar, Bilaspur (C.G.)

---- Respondents

For Appellants	:	Shri Ritesh Verma, Advocate.
Respondent No. 3	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

02/04/2019

- 1) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 24/03/2000 passed by Second Additional Motor Accident Claims Tribunal Bilaspur in Claim Case No. 10/1998 awarding total

compensation of Rs. 1,51,000/- with interest @ 12.5% per annum from the date of application till realization, considering 50% negligence on part of deceased himself, fastening liability on the Non-applicant No. 1, 3 and 4. Exonerated non-applicant No. 2/The Oriental Insurance Company Limited on the ground that at the time of accident the deceased was not having valid and effective driving licence.

- 2) As per averments of claim petition, on 25/06/1995, deceased Gautam Nishad, aged about 32 years, earning Rs. 4,000/- per month working as driver, was driving Truck bearing No. CPL 6185 and going towards Bilaspur to Champa. On the way one Trailer bearing No. GQG 8196 driven by Purshottam, rashly and negligently dashed the Truck. As a result of this accident i.e collision of two vehicles Trailer and Truck both are absolved and driver of both the vehicles died due to burn injury. At the time of accident Truck was owned by non-applicant No. 1/Sushil Kumar Malhotra and insured with non-applicant No.2/Oriental Insurance company Ltd. Non-applicant No. 3/M/s J.H. Parpiya & Company was the owner of the Trailer and insured with non-applicant No. 4/New India Insurance Co. Ltd.
- 3) On claim petition being filed by the claimant, wife and children of the deceased Gautam Nishad seeking compensation to the tune of Rs. 2,88,000/- alongwith interest under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above in Para 1 of this Judgment.
- 4) Learned counsel for the appellants/claimants submits that though he has raised various grounds in this memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds only :-
 - i. that the income of the deceased has wrongly been considered by the Tribunal as Rs. 1,500/- per month

whereas it should have been Rs. 100/- per day i.e Rs. 3,000/- per month in the light of citation ***Shiv Kumar and Others V/s. Maleshram and others 2006 L.T. (C.G.) 96***, which has been decided by Hon'ble Division Bench of this High Court.

- ii. that the multiplier of 12 has wrongly been applied and considering the age of the deceased, it should have been 16.
- iii. that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. No amount towards other consortium has been granted.

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***.

- 5) On the other hand, learned counsel for the respondent No. 3/ Insurance Company 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.
- 6) Heard learned counsel for the parties and perused the material available on record.
- 7) It is not disputed that the two vehicles was involved in accident owner-driver vehicle Truck bearing No. CPL 6185 driven by deceased Gautam Nishad and other vehicle Trailer bearing No. GQG 8196 driven by Purshottam was dashed due to head on collision of these two vehicles i.e. Truck and Trailer and driver of both the vehicles succumbed.
- 8) As per finding given by the learned Tribunal in para 24, its not challenged by both the parties that the driver of both the

offending vehicles involved in head on collision and both are equally liable for their contributory negligence is unchallenged.

- 9) After perusal of deep consideration of the entire case, learned Tribunal has established in para No. 19, 20, 23 and 24 of the award that this is a squarely covered case of contributory negligence of both the deceased drivers, hence claimants are entitled 50% compensation from the relevant respondents.
- 10) So far as to concerned, as per award application of non-applicant No. 1 for his liability during the pendency of this appeal non-applicant No.1/respondent No. 1 Sushil Kumar Malhotra was died and his name is deleted as per Hon'ble Court's Order dated 27/08/2013 and legal heirs of non-applicant No.1/respondent No. 1 Sushil Kumar Malhotra not brought on record of appeal.
- 11) So far as to the liability on the non-applicant No. 2/The Oriental Insurance company, learned Tribunal has rightly considered the mater and found that in para 27 of the award deceased has no effective and valid driving licence of heavy goods vehicle and under such circumstances non-applicant No. 2/The Oriental Insurance company shall not be liable and hence exonerated by the learned Tribunal and the same has not been subsequently pressed by the claimants.
- 12) As regards income of the deceased, though 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. 3,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 32 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma and Pranay Sethi* (supra), the claimants are held entitled for

compensation in the following manner:-

S. N.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs 3000/- per month.	(Rs. 3000 x12) = Rs. 36000 per annum
02.	40% of (1) above to be added towards future prospects.	(Rs. 36000 + 14400) = Rs. 50400/-
03.	1/3 deduction towards personal and living expenses of the deceased	(Rs. 50400 - Rs. 16800) = Rs. 33600/-
04.	Multiplier of 16 to be applied	(Rs. 33600 x16) = Rs. 537600/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06.	50% deduction towards contributory negligence	(607600 - 303800) = Rs. 303800/-
	Total compensation	Rs. 3,03,800/-

- 13) Since the Tribunal has already awarded Rs. 1,51,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 1,52,800/- with interest @ 12.5% per annum from the date of application till realization. Non-applicant No.3M/s J.H. Parpiya and Company and Non-applicant No. 4/The New India Insurance Co. Ltd. is held jointly and severally liable to pay the entire amount of compensation to the claimants. However, rest of the conditions of the impugned award shall remain intact.
- 14) In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

-Sd/-
(Gautam Chourdiya)
Judge