

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 447 of 2019**

1. Md. Shadik S/o Late Jamir Ali Aged About 47 Years,
 2. Smt. Hafiza W/o Md. Shadik Aged About 40 Years,
- Both R/o Village Badwar, P.O. Govindpur P.S. - Ramkola, District Surajpur (C.G.).

---- Appellants/Claimants**Versus**

1. Dev Kumar Shriwas S/o Late Ramvriksh Thakur Aged About 34 Years R/o Govindpur Out - Post - Rewati, P.S. Chandraura District Surajpur (C.G.) (Driver) (Non-applicant No. 1)
2. Radhakrishna Gupta S/o Late Shankar Dayal Prasad Gupta Aged About 50 Years R/o Old Bus Stand Ambikapur, P.S. Ambikapur, District Surguja (C.G.) (Owner) (Non-applicant No. 2)
3. The Oriental Insurance Co. Ltd. Branch Office Ambedkar Chowk Ambikapur, District Surguja (C.G.) (Non-applicant No. 3)

---- Respondents

For Appellants	:	Ms. Soniya Kuldeep, Advocate.
Respondent No. 3	:	Shri R.N. Pusty, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****20/06/2019**

- 1) Heard on I.A. No. 1 and I.A. No. 2.
- 2) Heard on I.A. No. 1, application for condonation of delay this is claimant appeal by the deceased Md. Anish, looking to the facts and circumstances of the case and reason mentioned in para 1 to 3 of the application for condonation of delay supported by an affidavit and sufficient cause for delay mentioned by the claimant considered and allowed.

- 3) I.A. No. 2, application for condonation of delay in payment of the process fees is disposed of, looking to the liability fastened upon respondent No.3/non-applicant No. 3 and no any counter appeal is filed by the respondent No. 3 challenging the award passed by the learned Tribunal as submitted by both the parties, looking to the facts and circumstances of the case no need to be noticed to respondent Nos. 1 and 2, looking to the liability fastened upon Insurance Company, therefore I.A. No. 2 is disposed of.
- 4) Heard on admission. The appeal being arguable on merit is admitted for hearing.
- 5) This appeal is heard finally with the consent of both the parties.
- 6) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 14/05/2018 passed by Additional Motor Accident Claims Tribunal, Pratappur, District Surajpur (C.G.) in Claim Case No. 10/2018 awarding total compensation of Rs. 5,16,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1, 2 & 3 jointly and severally.
- 7) As per averments claim petition, on 06/10/2017 deceased Md. Anish, 20 years of age, earning Rs. 5,000/- from the Agricultural work, was going Pratappur from Badwar by Bus bearing No. CG04 E 7333. However, on the way near Govindpur Harijanpara non-applicant No.1/Dev Kumar Shriwas driving Bus (offending vehicle) in a rash and negligent manner and due to that reason the deceased fallen down out of Bus and come under rear wheel. As a result of his accident Md. Anish sustained grievous injury and died on the spot. At the time of accident the offending vehicle was owned by non-applicant No. 2/Radhakrishna Gupta and insured with Non-applicant No. 3/The Oriental Insurance Co. Ltd.
- 8) On claim petition being filed by the claimants, parents of the

deceased 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.

- 9) Learned counsel for the appellants/claimants submits as though he has raised various grounds in this memo of appeal, however, he is not pressed on those grounds and is assailing the awards on the following grounds only :-
 - i. that income of the deceased has wrongly been considered by the Tribunal as Rs. 4500/- per month; whereas it should have been Rs. 10000 per month.
 - ii. that no amount towards future prospect has been granted to the claimants.
 - iii. that 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.***

- 10) 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.
- 11) Heard learned counsel for the parties and perused the material available on record.
- 12) As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs. 9,000/- per month from agriculture work, as labour collecting Tendu leaves and selling of Goats and Cocks looking to the statement of AW-01

Md. Shadik father of the deceased, AW-02 Kupesh Kumar and AW-03 Md. Nafis 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. 8,000/-per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 20 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma & Pranay Sethi* (supra), the claimants are held entitled for compensation in the following manner:-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs 8000/- per month.	(Rs. 8000x12) = Rs. 96000 per annum
02.	40 % of (i) above to be added towards future prospects.	(Rs. 96000 + 38400) = Rs. 134400/-
03.	1/2 deduction towards personal and living expenses of the deceased	(Rs. 134400 - 67200) = Rs. 67200/-
04.	Multiplier of 18 to be applied	(Rs. 67200 x 18) = Rs. 12,09,600/-
05.	Towards loss of estate and funeral expenses	Rs. 30,000/-
	Total compensation	Rs. 12,39,600/-

Since the Tribunal has already awarded Rs. 5,16,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 7,23,600/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

-Sd/-
(Gautam Chourdiya)
Judge