

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 543 of 2019**

1. Smt. Ishwari Bai Sori W/o Late Kamlesh Kumar Sori Aged About 28 Years,
2. Tarni S/o Late Kamlesh Kumar Sori Aged About 8 Years,
3. Hemendra Sori S/o Late Kamlesh Kumar Sori Aged About 6 Years, appellant No. 2 and 3 are Minor Through Legal Guardian Mother Ishwari Bai.
4. Ramji S/o Shobha Ram Sori Aged About 55 Years,
5. Smt Kunji W/o Ramji Sori Aged About 53 Years,

All are Caste Dhruv, R/o Village Halba, Post Halba, Tahsil Narharpur, District Kanker (C.G.)

---- Appellants/Claimants

Versus

1. Ashok Masih S/o Late Premlal Aged About 50 Years R/o Tikrapara Dhamtari, Police Station, Post, Tahsil And District- Dhamtari (C.G.).
2. Janardan Soni S/o Late Laxminarayan Soni Aged About 55 Years R/o Amapara Dhamtari, District- Dhamtari (C.G.).
3. Divisional Manager Oriental Insurance Company Limited, M.B. Trade Near Amar Talkies Dhamtari, Chhattisgarh, Police Station Post, Tahsil And District- Dhamtari (C.G.).

---- Respondents

For Appellants	:	Shri Kunal Das, Advocate.
Respondent No. 3	:	Shri Arun Kumar Shukla, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

18/06/2019

- 1) This appeal is filed by the claimants for seeking enhancement and liability fastened upon non-applicant No. 3/respondent No.

3/ Oriental Insurance Company and no counter appeal is filed by the Insurance Company as submitted by both the counsel of the parties. Therefore, default as pointed by the office is overruled looking to the liability fastened upon non-applicant No. 3/ respondent No. 3/Oriental Insurance Company and appeal is heard on merits with the consent of party without serving the notice to the respondent Nos. 1 and 2.

- 2) Heard both the counsel of the parties.
- 3) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 27/10/2018 passed by Additional Motor Accident Claims Tribunal Dhamtari (C.G.) in Claim Case No. 155/2017 awarding total compensation of 8,43,500/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No. 3/respondent No. 3/Oriental Insurance Company Ltd.
- 4) As per averments of claim petition, on 12/11/2016 deceased Kamlesh Sori, 30 years of age, earning between Rs. 12,000/- to Rs. 15,000/- per month as a Mason, was riding his motorcycle bearing No. CG05 AB 5087 going towards village Halba from village Kochvahi Rapta with a moderate speed. However, on the way non-applicant No.1/Ashok Masih driving Truck bearing No. CG17 ZC 0389 (offending vehicle) in a rash and negligent manner dashed the deceased. As a result of his accident Kamlesh Sori sustained grievous injury and died on the spot. At the time of accident the offending vehicle was owned by non-applicant No. 2/Janardan Soni and insured with Non-applicant No. 3/Oriental Insurance Company Limited.
- 5) On claim petition being filed by the claimants, wife, children and 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.

- 6) 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. 4,500/- per month; whereas it should have been between Rs. 12,000/- to Rs. 15,000/- 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.***

- 7) 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 matter has rightly awarded compensation which needs no interference by this Court.
- 8) Heard learned counsel for the parties and perused the material available on record.
- 9) As regards income of the deceased, though the claimants have pleaded that the deceased was earning between Rs. 12,000/- to Rs. 15,000/- per month as Mason but no documentary 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. 6,500/- per month as per

minimum wages for skilled labour at the relevant time. Further, considering the age of the deceased i.e. 30 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:-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs 6,500 per month.	(Rs. 6500x12) = Rs. 78,000 per annum
02.	40 % of (i) above to be added towards future prospects.	(Rs. 78000 + 31200) = Rs. 109200/-
03.	1/4 deduction towards personal and living expenses of the deceased	(Rs. 109200 - 27300) = Rs. 81900/-
04.	Multiplier of 17 to be applied	(Rs. 81900x 17) = Rs. 13,92,300/-
05.	Towards parental consortium (as awarded by Tribunal)	Rs. 1,00,000/-
06.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
	Total compensation	Rs. 15,62,300-

Since the Tribunal has already awarded Rs. 8,43,500/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 7,18,800/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

-Sd/-
(Gautam Chourdiya)
Judge