**NAFR**

## HIGH COURT OF CHHATTISGARH, BILASPUR

**MAC No. 433 of 2018**

1. Smt. Binda Bai Wd/o Late Kamta Ram Nishad Aged About 34 Years

2. Ku. Dhaneshwari D/o Late Kamta Ram Nishad Aged About 15 Years

3. Jitendra Kumar S/o Late Kamta Ram Nishad Aged About 14 Years

4. Ku. Rohani D/o Late Kamta Ram Nishad Aged About 13 Years

5. Smt. Dukhin Bai W/o Late Chatur Ram Aged About 50 Years

Appellant Nos. 2, 3 & 4 are minor through their natural guardian mother Smt. Bindra Bai)

All are residing at Durga Chowk, Santoshi Nagar, P.S. Tikrapara, District Raipur, Chhattisgarh

**----Appellants/ Claimants**

**Versus**

1. Balram Das Vishnav S/o Gangadas Vaishnav Aged About 40 Years R/o Ward No.2, Motipur, P.S. Chikhli, Tahsil And District Rajnandgaon, Chhattisgarh (Driver Of Truck No. M.H.-40/ Y-9072)

2. Nirmal Singh Bhatiya S/o Surjeet Singh Bhatiya R/o House No.5, Ward No.27, Kailash Nagar, Rajnandgaon, Tahsil And District Rajnandgaon, Chhattisgarh (Owner Of Truck No. M.H.-40/ Y-9072)

3. The National Insurance Company Limited Through Divisional Manager, Mobin Mahal, G.E.Road, Raipur, Chhattisgarh (Insurer Of Truck No. M.H-40/ Y-9072)

**---- Respondents**

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| For Appellants | Shri Akhilesh Mishra, Advocate. |
| For Respondent nos. 1 &2 | None, though served. |
| For Respondent no.3 | Shri Sudhir Agrawal, Advocate. |

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**Hon'ble Shri Justice Gautam Chourdiya**
**Judgment on Board**

**03/01/2019**

1. This appeal is by the claimants against the award dated27.01.2018 passed by 8th Additional Motor Accident Claims Tribunal, Raipur, District Raipur, C.G. in Claim Case No.595/2016 awarding total compensation of Rs.12,79,000/- with interest @ 8% per annum from the date of application till realization, fastening liability upon non-applicants nos.1 & 2 / Driver & Owner, while exonerating the Insurance Company. However, the Tribunal considering the provisions of the Motor Vehicles Act, the various judgments of the Hon'ble Supreme Court and the facts and circumstances of the case, ordered for pay and recover in this case, thereby directed the Insurance Company to first pay the awarded amount to the claimants and then recover the same from the non-applicants No. 1& 2/ Driver & Owner.

2. As per claim petition, on 14.08.2016 deceased Kamta Ram Nishad, aged about 36 years, earning Rs.12,000/- per month as Driver, died in the motor vehicular accident caused due to rash and negligent driving of Truck bearing no.MH40-Y-9072 by non-applicant No.1. As a result, deceased sustained grievous injuries on his body and died on the spot. At the time of accident, vehicle was owned by respondent no. 2 and insured with respondent no.3.

3. On claim petition being filed by the claimants i.e. Wife,

Children and Mother of deceased under Section 166 of the Motor Vehicles Act to the tune of Rs.29,71,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. Learned counsel for the appellants/claimants submits as under:

(I) that income of the deceased has wrongly been considered by the Tribunal as Rs.6,000/- per month whereas it should have been Rs.12,000/- per month looking to the job of the deceased i.e. Driver.

(ii) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. No amount towards loss of filial and 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***, ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, ***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.***

(iii) that the Tribunal has wrongly exonerated the Insurance Company of its liability whereas on the date of accident non-applicant no.1/Driver was having a valid and effective driving licence to drive the offending vehicle, in view of decision of Hon'ble Supreme Court in ***Mukund Dewangan Vs. Oriental Insurance***

***Company Limited*** *reported in* ***(2017) 14 SCC 663.***

5. On the other hand, learned counsel for the respondent/insurance company supports the impugned award so far as it relates to exoneration of the Insurance Company and assessment of quantum of compensation.

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

7. So far as issue of liability is concerned, as per evidence of NAW-1 H.R. Netam, NAW-2 J.K. Ekka, Ex.D-1 i.e. particulars of driving licence of non-applicant no.1 and Ex.D-2 i.e. particulars of offending vehicle, it is evident that on the date of accident non-applicant no.1 was having a licence to drive non-transport vehicle/light motor vehicle which was valid from 15.03.2010 to 17.07.2020 and its validity for transport vehicle was from 17.04.2013 to 16.04.2016. Admittedly, in the present case, the accident occurred on 14.08.2016 and as per Ex.D-2 the unladen weight of the offending vehicle is 10350 Kg. As such the offending vehicle was a heavy goods vehicle, as per driving licence Ex.D-1 of non-applicant no.1 he was not competent to drive the said vehicle on the date of accident and the matter of **Mukund Dewangan** (supra) is not applicable in the present case. In these circumstances, this Court is of the opinion that the Tribunal was justified in exonerating the Insurance Company

of its liability and fastening the same on non-applicant nos. 1 & 2 and further passing an order of pay and recover in this case.

8. So far as quantum of compensation is concerned, the Tribunal was justified in assessing the income of the deceased as Rs.6000/- per month on notional basis considering the minimum wages at the relevant time as the claimants could not prove his income as Rs.12,000/- per month by any documentary evidence. Further, considering the age of the deceased i.e. 35 years, the dependency i.e. 5, the nature of his job i.e. Driver and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi & 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. | Rs.72,000/- per annum (as assessed by the Tribunal) |
| 02. | 40% of (i) above to be added towards future prospects. | Rs.28,800/-<br><br>Rs.72,000 + Rs.28,800 = Rs.1,00,800/- |
| 03. | 1/4 deduction towards personal and living expenses of the deceased | Rs.25,200/-<br><br>Rs.1,00,800 – Rs.25,200 = Rs.75,600/- |
| 04. | Multiplier of 16 to be applied | Rs.12,09,600/- |

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|---|---|---|
| 05. | Towards loss of estate, loss of spousal consortium and funeral expenses | Rs.70,000/- |
| 06. | Towards loss of parental consortium @ Rs.10,000/- each to claimants no. 2 to 4 | Rs.30,000/- |
| 07 | Towards loss of filial consortium @ Rs.20,000/- to claimant no.5 | Rs.20,000/- |
| | **Total Compensation** | **Rs.13,29,600/-** |

Since the Tribunal has already awarded Rs.12,79,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.50,600/- with interest @ 8% 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**

Akhilesh