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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 522 of 2019

1. Banshidhar Sahu S/o Shri Upendra Sahu, aged about 70 years
(Claimant No. 3)
2. Smt. Sukanti Sahu W/o Shri Banshidhar Sahu, aged about 65 years
(Claimant No.4)

Both are Residence of Village Kotdwari, Police outpost Balouda, Thana – Saraypali, Civil & Revenue District Mahasamund (C.G.)

---- Appellants/Claimants

Versus

1. Khemraj Bagh S/o Shri Heeralal Bagh, aged about 35 years, R/o Village-Balasi, Thana – Saraypali, Civil & Revenue District Mahasamund (C.G.)
(Driver of the Vehicle No. CG-13-C-0890/Non-applicant No.1)
2. Rajkumar Gupta S/o Shri Laxminarayan Gupta, aged about 55 years, R/o Mahalpara Main Road Saraypali Thana – Saraypali, Civil & Revenue District Mahasamund (C.G.)
(Owner of the Vehicle No. CG-13-C-0890/Non-applicant No.2)
3. Divisional Manager, The Oriental Insurance Company Limited, Madina Building Jail Road Raipur, District Raipur (C.G.)
(Insurer of the Vehicle No. CG-13-C-0890/Non-applicant No.3)
4. Smt. Gulapi Sahu W/o Late Shri Swapnil Sahu, aged about 28 years
(Claimant No.1)
5. Minor Snehil Sahu S/o Late Shri Swapnil Sahu, aged about 04 months
(Claimant No.2)

Respondent No. 5 is Minor through Natural Guardian Mother Smt. Gulapi Sahu, Respondent No. 4 & 5 are residence of Village- Kotwari, Police outpost- Balauda, Thana – Saraypali, Civil & Revenue District Mahasamund (C.G.)

---- Respondents

For Appellants	:	Shri Sumit Shrivastava, Advocate
For Respondents	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.03.2019

1. Heard on I.A. No. 01 of 2019.
2. This is an application for condonation of delay of 138 days in filing the appeal.
3. For the reasons mentioned in the application which is supported by affidavit,

the same is allowed and the delay in filing the appeal is condoned.

4. Heard on admission.

5. This is Claimants' (Claimants No. 3 & 4 before Tribunal) appeal filed under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, Saraypali, District Mahasamund (C.G.) in Claim Case No. 37 of 2017 vide award dated 23.06.2018.

6. As against compensation of Rs.54,50,000/- claimed by the Claimants by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for death of Swapnil Sahu in the motor accident, the Tribunal awarded a total sum of Rs.19,99,520/- along with interest @ 6% per annum from the date of application till realization and fastened the liability upon non-applicant No.3/Insurance Company along with non-applicants No. 1 and 2/driver & owner jointly and severally.

7. Brief facts are that on 12.04.2017 at about 06:00 pm deceased Swapnil Sahu was coming by motorcycle bearing registration No. CG-06/PA/4788 after performing his duties at Zaika Auto Mobile. When he reached near Sohaila, offending vehicle Jeep bearing registration No. CG-13/C/0890, which was being driven by non-applicant No. 1, owned by non-applicant No.2 and insured with non-applicant No.3, in rash and negligent manner, dashed the motorcycle. As a result thereof, Swapnil Sahu sustained grievous injuries and was taken to Government Hospital, Saraypali for primary treatment. Thereafter, on 13.04.2017, Swapnil was admitted in Balaji Hospital, Raipur where he died on 16.04.2017 during treatment.

8. In the instant appeal, Appellant No.1 Banshidhar Sahu is Claimant No.3; Appellant No.2 Smt. Sukanti is Claimant No.4; Respondent No.4 Smt. Gulapi Sahu is Claimant No.1 and Respondent No.5 Snehil is Claimant No. 2, who are father, mother, wife and son of deceased Swapnil respectively, before the Tribunal.

9. Learned counsel for the Appellants/Claimants submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the point of apportionment of amount of compensation awarded by the Tribunal between the Claimants No. 1 to 4 whereby

it has granted only a sum of Rs.3,00,000/- each to the present Appellants i.e. Claimants No. 3 & 4 which deserves to be enhanced suitably.

10. I have heard the learned counsel for the Appellants and perused the record of the Tribunal including award impugned.

11. From perusal of the impugned award, it is seen that there were four Claimants before the Tribunal i.e. Appellants, Banshidhar Sahu and Smt. Sukanti Sahu (Claimants No. 3 & 4), and Respondents No. 4 & 5, Smt. Gulapi Sahu & Minor Snehil Sahu (Claimant No. 1 & 2). At the time of accident, deceased Swapnil Sahu was aged about 35 years. As per Ex.-A/48, the deceased was posted as Collection Executive in Zaika Auto Mobiles & Finance Private Limited, Raipur and his gross-income was Rs.9,075/- per month, therefore, the Tribunal has rightly considered the income of the deceased as Rs.9,075/- per month and Rs.1,08,900/- per annum. In view of the decisions of the Hon'ble Supreme Court in **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**, the Tribunal has deducted 1/4th towards personal and living expenses of the deceased at Rs.27,225/- and thus assessed, the annual loss of dependency to Rs.81,675/-. Further, after applying the multiplier of 16 to the annual loss of dependency i.e. Rs.81,675/-, the total loss of dependency comes to Rs.13,06,800/-. Looking to the age of deceased i.e. 35 years, by adding 40% toward future prospect to the total loss of dependency at Rs.5,22,720/-, the amount comes to Rs.18,29,520/-. Further, the Tribunal has awarded Rs.1,00,000/- towards medical expenses and Rs.70,000/- under the conventional heads. Thus, the Tribunal has awarded a total compensation of Rs.19,99,520/- to the Claimants, therefore, in my opinion, the compensation awarded by the Tribunal is just and proper and does not call for any interference.

12. So far as argument in relation to the apportionment of amount of compensation to each of the Claimants is concerned, as per para- 15, the Tribunal has awarded a total compensation of Rs.19,99,520/- to Claimants No.1 to 4, out of

which Rs.5,00,000/- was directed to be kept in fixed deposit for a period of five years in the name of Claimant No.1 Gulapi Sahu; Rs.3,00,000/- - Rs.3,00,000/- shall be kept in fixed deposit for a period of three - three years in name of Claimant No. 3 Banshidhar Sahu & Claimant No. 4 Smt. Sukanti Sahu and Rs.6,00,000/- shall be kept in fixed deposit in the name of Claimant No.2 Shehil until he attains the age of majority in any Nationalized Bank or Post Office. The Tribunal further directed that the remaining amount shall be equally disbursed the Claimants No. 1, 3 & 4 through account payee cheque. Considering the age of the deceased i.e. 35 years, the fact that Claimant No.1, wife of the deceased, and that of Claimant No.2, son of the deceased aged about 4 months, the fact that they were fully dependent upon the deceased, the age of the Claimants No. 3 & 4 i.e. 70 & 65 years, the responsibility and liability of Claimant No.1 vis-a-vis Claimants No. 3 & 4, this Court is of the opinion that apportionment of compensation made by the Tribunal cannot be faulted with warranting any interference by this Court.

13. I do not find any scope either enhancement of compensation or share of the Appellants i.e. Claimants No. 3 & 4.

14. In this view of the matter, the appeal filed by the Claimants i.e. present Appellants herein under Section 173 of the Motor Vehicle Act for apportionment of amount of compensation or for enhancement of the compensation is liable to be dismissed and is hereby dismissed at the motion stage itself.

15. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge