

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 445 of 2018

1. Bhuneshwar Singh Bhuarya, Aged about 29 years, S/o Birjhu Ram Bhuarya
2. Smt. Johtarin Bai Aged about 50 years, W/o Birjhu Ram Bhuarya
3. Pradeep Kumar, Aged about 27 years, S/o Birjhu Ram Bhuarya

All are R/o- Village- Kunjkanhar, P.O.- Bharritola, P.S. & Tehsil- Daundi,
District Balod (C.G.)

---- Appellants/Claimants

Versus

1. Keshav Dhruv, Aged about 30 years, S/o- Omkar Dhruv, R/o Village- Murtarai, Village Panchayat- Jenjara, P.S. Panduka (Fingeshwar), District- Gariyaband, (C.G.)
(Vehicle Hyva Truck No.-CG -04/J.A./9804, Driver)
2. Narayan Chakravorty, S/o- Late Dulal Chakravorty, R/o- Village- Agoha Society (Colony), D.D.U. Nagar, Mahadev Ghat Raipur, Tehsil & District- Raipur (C.G.)
(Vehicle Hyva Truck No. CG – 04/J.A./9804, Owner)
3. National Insurance Company Ltd., Through- Branch Manager, Branch Office Branch No.-1, Naveen Market, Fhool Chowk, G.E. Road, Raipur, Tehsil & District- Raipur (C.G.)
(Vehicle Hyva Truck No.- CG – 04/J.A./9804, Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri Pushkar Sinha, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Anil Gulati, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

judgment on Board

08.02.2019

I.A. No. 1 of 2018:

1. This is an application for condonation of delay of 63 days in filing the appeal.
2. Heard.
3. For the reason mentioned in paras 2 and 6 of the application which is supported by affidavit, the same is allowed and the delay in filing the appeal is condoned.

4. The appeal being arguable on merits is admitted for hearing.
5. With the consent of the learned counsel for the parties, the appeal is heard finally.
6. This appeal is by the Claimants/Appellants against the award dated 12.10.2017 passed by the Additional Motor Accident Claims Tribunal, Dhamtari (C.G.) in Claim Case No. 01 of 2017 awarding total compensation of Rs.4,26,999/- with interest @ 6% per annum from the date of award till realization, fastening the liability on the Insurance Company/non-applicant No.3.
7. As per claim petition, on 18.12.2016 deceased- Birjhu Ram Bhuarya, aged 55 years, earning Rs.300/- per day by working in Protection Wall Construction Company, died in the motor vehicular accident caused to rash and negligent driving of the vehicle- Hyva bearing registration No. CG-04/J.A./9804 by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3.
8. On claim petition being filed by the Claimants under Section 166 of the Motor Vehicles Act, 1988, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
9. Learned counsel for the Appellants/Claimants submits as under:-
 - (i) that income of the deceased has wrongly been considered by the Tribunal as Rs.4,000/- whereas it should have been Rs.6,000/-;
 - (ii) that no amount towards future prospect has been granted to the Claimants;
 - (iii) that the amount awarded by the Tribunal towards funeral expenses and loss of consortium also being on the lower side deserves to be enhanced suitably.
10. On the other hand, learned counsel for 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, the Claimants have pleaded that the deceased was earning Rs.300/- per day by working in Protection Wall Construction Company but except oral evidence, 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.6,000/- per month as per minimum wages at the relevant time of skilled labour.

13. So far as argument relating to non-grant of any amount towards future prospect is concerned, in view of the decision of the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,** considering the age of the deceased i.e. 55 years, there should be 10% addition to the annual income of the deceased towards future prospect.

14. So far as argument relating to low amount being awarded by the Tribunal towards funeral expenses and loss of consortium is concerned, considering the facts and circumstances of the case, in view of the decision in *Pranay Sethi* (supra), the Tribunal has not erred in awarding the amount under the above heads.

15. Therefore, considering the age of the deceased, the dependency, the nature of his job and 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 *Pranay Sethi* (supra), this Court is of the opinion that the Claimants/Appellants are entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation
1	Income of the deceased	Rs.6,000/- per month i.e. Rs.72,000/- per annum
2	10% towards future prospects added to annual income	(Rs.72,000/- + Rs.7,200/-) Rs.79,200/-
3	1/3rd deduction towards personal expenses of the deceased	(Rs.79,200/- – Rs.26,400/-) Rs.52,800/-

4	Multiplier of 11 applied	Rs.52,800/- x 11=Rs.5,80,800/-
5	For funeral expenses	Rs.25,000/- (as awarded by the Tribunal)
6	For loss of consortium	Rs.50,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.6,55,800/-

Since the Tribunal has already awarded Rs.4,26,999/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,28,801/-.

16. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimants/Appellants shall be entitled to a total enhanced amount of compensation of Rs.2,28,801/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of award till realization. However, rest of the conditions of the impugned award shall remain intact.

17. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge