

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Miscellaneous Appeal (Civil) No. 803 of 2014**

- National Insurance Company Limited Through Divisional Manager, Office Kamthi Line Rajnandgaon Through: Authorized Signatory For National Insurance Company Limited Divisional Office Bilaspur (C.G.)

**---- Appellant/Insurer/Non-applicant No.2**

**Versus**

1. Smt. Prabha Soni aged 43 years Wd/o Late Shankar Lal Soni
2. Kumari Naina aged 20 years, D/o Late Shankar Lal Soni
3. Nitesh Kumar aged 16 years, S/o Late Shankar Lal Soni
4. Ku. Swati Soni D/o Late Shankar Lal Soni

Above Respondents No. 3 & 4 being minor through their Guardian Mother Smt. Prabha Soni Wd/o Late Shankar Lal Soni

5. Smt. Suman Soni Wd/o Late Kanhaiya Lal Soni, aged 66 years

**(Claimants)**

All above Respondents are R/o Indira Nagar Patan P.S. & Tahsil Patan District Durg (C.G.)

6. Prem Lal alias Prem Kumar Banjare, aged 30 years, R/o Village Bhatapara Salood P.S. Utai District Durg (C.G.)

**(Owner-Driver/Non-applicant No.1)**

**---- Respondents**

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|----------------------------|---|--------------------------------|
| For Appellant              | : | Shri B.N. Nande, Advocate      |
| For Respondents No. 1 to 5 | : | Shri Manish Upadhyay, Advocate |
| For Respondent No. 6       | : | None                           |

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**Hon'ble Shri Justice Gautam Chourdiya, J**

**Judgment on Board**

**08.04.2019**

1. This appeal is by the Insurance Company/non-applicant No.2/Appellant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 25.02.2014 passed by the First Additional Motor Accident Claims Tribunal, Durg, District Durg (C.G.) in Claim Case No. 191 of 2011 awarding total compensation of Rs.19,20,932/- with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicant No. 2 alongwith non-applicant No.1

jointly and severally.

**2.** Facts of the case, in brief, are that on 23.10.2009 deceased Shankar Lal Soni alongwith his friend Shisupal was going from Utai to Patan by motorcycle bearing registration No. CG-04/0589 which was being ridden by Shankar Lal Soni and Shisupal was the pillion rider of the same, when they reached village Selood, non-applicant No.1 Prem Lal @ Prem Kumar Banjare driving the offending vehicle- Tractor bearing registration No. CG-07/D/4984 in a rash and negligent manner, dashed the motorcycle. As a result thereof, Shankar Lal Soni sustained grievous injuries on various parts of the body and during treatment in Sector-9 Hospital, Bhilai, he died on 28.07.2010.

**3.** Learned counsel for the Appellant submits that without any cogent evidence, the income of the deceased as Rs.5,000/- per month considered by the Tribunal is on the higher side and the amount awarded towards conventional heads i.e. Rs.3,25,000/- also being on the higher side deserves to be reduced suitably.

**4.** On the other hand, learned counsel for Respondents 1 to 5/Claimants 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.

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

**6.** As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

**7.** It is not disputed by learned counsel for the parties that the accident occurred on 23.10.2009 due to rash and negligent driving of the offending vehicle Tractor by non-applicant No.1. As per statement of Claimant No.1, wife of deceased Shankar Lal Soni, she stated that her husband was motor mechanic and he had his own shop and was earning Rs.9,000/- per month. As per statement of Ramashankar (AW-4), he stated that the shop of deceased was situated at Purana Bus-Stand, Patan which was in the name and style of 'Durga Auto Center' and AW-

4 was the worker of the same and he was being paid Rs.500/- per day by the deceased. But, no documentary evidence in support thereof has been adduced regarding income of the deceased. Therefore, the Tribunal has assessed the age of the deceased as 46 years on the basis of documents produced by the Claimants and the income has been assessed as per minimum wages prevalent at that time for skilled person as Rs.5,000/- per month i.e. Rs.60,000/- per annum. Further, the Tribunal keeping in view of the decisions in ***Rajesh & Others Vs. Rajbir Singh & Others, 2013 (2) A.C.C.D. 969 (SC)*** and in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, applied the multiplier of 13, made 1/4th deduction towards personal and living expenses of the deceased and grant of 30% towards future prospects, which cannot be faulted with. So far as grant of amount under the conventional heads is concerned, considering the principles of law laid down in ***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***, the amount of Rs.3,25,000/- awarded under the conventional heads also cannot be said to be excessive or exorbitant. In addition to that, as per Ex.-P/24 to Ex.-P/109 relating to medical treatment and bills, the Tribunal was justified in awarding Rs.8,35,432/- towards medical expenses.

8. In the result, the appeal filed by the Insurance Company being without any substance deserves to be dismissed and is, accordingly, dismissed.

Sd/-

**(Gautam Chourdiya)**  
Judge