

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 667 of 2014**Judgment reserved on : 23/01/2019Judgment delivered on : 08/02/2019

- Sri Ram General Insurance Company Limited, Branch Office - Sitapura, Jaipur (Rajasthan)

**----- Appellant****Versus**

1. Rambai, aged about 33 years, W/o Late Ramprakash (Claimant)
2. Avinash, aged about 22 years, S/o Late Ramprakash.
3. Arvind, aged about 20 years, S/o Late Ramprakash.
4. Ku. Neha, aged about 18 years, D/o Late Ramprakash.
5. Anil Kumar, aged about 16 years, S/o Late Ram Prakash.
6. Shivratan, aged about 70 years, S/o Late Ranglal

Through natural guardian (Mother) Rambai, appellant No.1

All caste are Cherava, Resident - Gram Pori (Amalpur) Post Rajoli Thana and Rajoli Thanaan and Tahsil Sonhat, District Korla (C.G.)

7. Ram Prasad S/o Nanku, aged about 29 years, Caste Rajwal, Occupation Driver (Driver of Tata Sumo No.CG-16-1369)
8. Samay Lal Yadav S/o Dhansay, aged about 38 years.

Both are resident of Dumaria, Post and Thana, Patna,

Tahsil Baikunthpur, District Korla (C.G.) (Owner of Tata Sumo No. CG-16-1369)

**---- Respondents**

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|------------------------|---|----------------------------------------|
| For Appellant          | : | Shri. Deepak Gupta, Adv.               |
| For Respondents 1 to 6 | : | Shri. Vijay Kumar Sahu,<br>Advocate.   |
| For Respondents 7 & 8  | : | Shri. Avinash Chand Sahu,<br>Advocate. |

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**Hon'ble Smt Justice Rajani Dubey**

**C A V Order**

**/02/2019**

01. This appeal arises out of the award dated 20.12.2013 passed by Additional Motor Accident Claims Tribunal (FTC) (for short the "Tribunal"), Baikunthpur, District Korla (C.G.), in Claim Case No.118/2013 awarding a compensation of Rs.13,28,070/- in favour of the appellants/claimants for the death of Shri Ram Prakash (since deceased).

02. Facts of the case in brief are that on 20.06.2011 at about 8.30 AM, he was going to village Salka for departmental inspection. When he was returning on his motorcycle bearing registration No. CG-16-C-5461, near

village Kailashpur Sudubhudu Nala, a Tata sumo bearing registration No.CG-16-1369 driven by respondent No.7 herein in a rash and negligent manner came from wrong side and dashed him, as a result of which he fell down, sustained grievous injuries and died in the hospital during the course of treatment. A claim petition was filed by the appellants/claimants who happen to be the legal heirs of the deceased claiming a compensation of Rs.38,44,136/- *inter alia* pleading that the deceased died due to negligent driving of the offending vehicle, at the relevant time he was aged about 35 years, working as Shiksha Karmi class-II, posted in Govt. Pre Middle School, Bhaiswar and his monthly gross salary was Rs.10414/- per month.

03. Pleading of the claimants have, however, been denied by the insurance company/appellant.

04. The learned Tribunal by the impugned award, after considering the evidence available before it, has awarded a compensation of Rs.13,28,070/- in favour of claimants/respondents with interest @ 6% per annum from the date of application till realization. It is also directed that the appellant is liable for payment to the claimants.

05. A appeal/objection has also been preferred by the

Claimants/respondents under Order XLI, Rule 22 of the Code of Civil Procedure seeking enhancement of the compensation.

06. Shri Gupta, learned counsel for the appellant submitted that, considering the facts and circumstances of the case and material on record, he is challenging the quantum part of the impugned award and the quantum of compensation is required to be reduced proportionately.

07. On the other hand, learned counsel for the claimants/respondents 1 to 6 submits that there is no substance in the contention raised on behalf of Insurance Company. He also submits that the compensation awarded by the Tribunal is not in accordance with law and the amount awarded is on the lower side. That the Tribunal has erred in law in deducting the amount towards personal expenses on the ground that in all six persons were dependent on the deceased. The claims Tribunal has also failed in not taking future prospect as per the ration laid down in the case of **Santos Devi V. National Insurance Co. Ltd**<sup>1</sup>.

08. Heard counsel for the parties and perused the documents on record.

09. In a motor accident claim case, what is important is

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<sup>1</sup> 2012 (6) SCC 421

that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

10. Now this Court shall examine as to whether the compensation of Rs.13,28,070/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

11. From the pleadings of the respective parties and the overall evidence on record it is clear that the accident occurred with the offending vehicle which was insured with appellant-insurance company. and was being driven by respondent No.7. Evidence further goes to show that offending vehicle was being driven in rash and negligent manner. There is evidence on record (Ex.P.1) that the salary of the deceased was Rs.10,183/-. In Ex.P/1, no deduction whatsoever has been shown, thus, amount of Rs.10,183/- is considered as gross salary of the deceased. It is settled position of law that while calculating the salary of the deceased, only the gross salary is to be calculated and not net salary. Thus, the monthly gross salary of Rs.10,183/- is taken as it is. Annual income of the deceased thus comes to Rs.1,22,196/-.

12. Accordingly, the monthly income of the deceased is taken to be Rs.10,183/- which makes the annual income as Rs.1,22,196/-. The deceased was married and 41 years of old at the time of accident. Hence, future prospects at 30% of the actual income of the deceased is required to be taken, thus, the amount comes to Rs.36,659/- (30% of 1,22,196/-). Further, there being six claimants, the deduction of 1/4 towards personal expenses of the deceased from his annual income would be just and proper. Accordingly, by deducting 1/4th from the annual income of the deceased, the claimant's dependency is assessed at Rs.1,19,141/- (Rs.1,58,855 - Rs.39,714).

13. The claimants/respondents 1 to 6 have brought on record the license of the deceased which shows the date of birth as 01.04.1971. There is no basis for this Court to disbelieve the date of birth of the deceased as this (license) is considered to be strong proof of date of birth. Thus, looking to the date of birth of the deceased on license, he was 40 years and 2 months of age, and for this group the multiplier of 15 has been fixed. This Court is of the opinion that the Tribunal has rightly applied the multiplier of 15 in this case. This Court has already assessed the claimants' dependency at Rs.1,19,141/-

after deducting 1/4th towards person expenses. Therefore, the compensation is assessed to Rs.1,19,141/- x 15 = Rs.17,87,115/-. That apart, the Tribunal has awarded Rs. 45,000/- under the conventional heads, which in the facts and circumstances of the present case and in view of the judgment of Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi & Ors**<sup>2</sup>, is inadequate. The Supreme Court in the matter of **National Insurance (Supra)** dealt with the various heads under which compensation is to be awarded in a death case. Thus, keeping in view all these things, above discussion and in view of decisions of Hon'ble Supreme Court in the matter of **Santosh** and **National Insurance (supra)**, this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The claimants/respondents 1 to 6 are entitled for compensation in the following manner:-

| Head                                           | Compensation awarded                                |
|------------------------------------------------|-----------------------------------------------------|
| Income                                         | Rs.10,183/-                                         |
| Future Prospect                                | Rs.3,055/- (i.e. 30% of the income)                 |
| Deduction towards living and personal expenses | Rs.3,310/- (i.e. 1/4th of Rs.10,183/- + Rs.3,055/-) |
| Total Income                                   | Rs.9,928/- (Rs.13,238 -                             |

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<sup>2</sup> (2017) 16 SCC 680

|                                   |                                     |
|-----------------------------------|-------------------------------------|
|                                   | Rs.3,310)                           |
| Yearly Income                     | Rs.1,19,136/- (Rs.9,928/- x 12)     |
| Multiplier applied                | 15                                  |
| Loss of future income             | Rs.17,87,040/- (Rs.1,19,136/- x 15) |
| Loss of Estate                    | 15,000/-                            |
| Loss of Consortium                | 40,000/-                            |
| Funeral Expenses                  | 15,000/-                            |
| <b>Total compensation Awarded</b> | <b>Rs.18,57,040/-</b>               |

14. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.18,57,040/- i.e. (17,87,040/- + 70,000/-) rounded off at Rs.18,57,100/- for which the claimants are entitled to receive as compensation for the death of deceased Ram Prakash. Since the Tribunal has already awarded Rs.13,28,070/-, after deducting the same the claimants/respondents 1 to 6 are entitled for enhanced amount of Rs.5,29,030/-. This additional amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till realization. The amount received by the claimants, if any, shall be adjusted in the enhanced sum.

15. Resultantly, the cross-appeal filed by the claimants/respondents 1 to 6 is allowed in part and the impugned award is modified to the extent indicated herein above.

16. The appeal filed by the appellant-Insurance Company of the offending vehicle is dismissed.

17. Copy of this judgment be sent to the concerned Tribunal.

Sd/-

**(Rajani Dubey)**  
**Judge**

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