

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 809 of 2017

1. Shri Badrika Prasad Verma aged about 50 years S/o Ramdayal Verma
2. Smt. Koushilya Verma W/o Badrika Prasad Verma, aged about 46 years
3. Suresh Kumar Verma, aged about 17 years S/o Badrika Prasad Verma

Appellant No.3 is minor through his legal Guardian Father Shri Badrika Prasad

All R/o Village House of Keshav Verma Rajendra Nagar Urla Raipur Thana Urla Raipur Tahsil & District Raipur (Chhattisgarh)

---- Appellants/Claimants

Versus

1. Brijlal Kurre aged about 27 years, S/o Shri Vedram Kurre, R/o Village Dhamani Thana Pathariya, District Mungeli (C.G.) (Driver and Owner of the offending vehicle Car No. C.G.28 B/1477)/**Non-applicant No.1**
2. The New India Insurance Company Limited, Through: Branch Manager Madina Building, Jail Road Raipur, Thana & Tahsil & District Raipur (C.G.) (Insurer of the offending vehicle Car No. C.G.28 B/1477)/**Non-applicant No.2**

---- Respondents

For Appellants	:	Shri A.L. Singroul, Advocate
For Respondent No. 1	:	Shri Sanjeev Kumar Sahu, Advocate
For Respondent No.2	:	Shri Samir Singh, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.02.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the Ninth Additional Motor Accident Claims Tribunal, Raipur (C.G.) vide award dated 22.03.2017 passed in Claim Case No. 838 of 2015.

2. The Claimants/Appellants, unfortunate father, mother and brother of deceased- Durgesh Verma, claimed compensation of Rs.69,50,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of

deceased- Durgesh Verma in the motor accident.

3. Facts of the case, in brief, are that on 16.09.2015 deceased- Durgesh Verma was riding the motorcycle bearing registration No. CG-04/CS/0822 along with Gabber Yadav who was pillion rider of the said motorcycle and was going from Semariya to Bhatapara and when he reached near Bhatapara city, Respondent No.1-Brijlal Kurre, driver-cum-owner of the offending vehicle Car bearing registration No. CG-28/B/1477, insured with non-applicant No.2, driving the Car in a rash and negligent manner, dashed the motorcycle of Durgesh Verma from the back side. Due to the said accident, Durgesh Verma sustained grievous injuries on his head and other parts of the body and he died on 29.09.2015 during treatment in the hospital. At the time of accident, the deceased was aged about 22 years, he was working in Private Company and was earning Rs.30,000/- per month.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.8,40,000/- in favour of the Appellants/Claimants with interest @ 6% per annum from the date of application till realization and has fastened liability on non-applicants No. 1 & 2 jointly and severally.

5. Learned counsel for the Appellants/Claimants submits that at the time of accident, the deceased had passed ITI in Electrician Trade and he was holding Diploma in Engineering. He also submits that deceased was working in Private Company and was earning Rs.30,000/- per month but Tribunal has considered the income of the deceased as Rs.4,000/- per month as notional income. Looking to the education of the deceased, the income of the deceased deserves to be enhanced suitably and likewise the amount awarded by the Tribunal under other heads is also required to be enhanced.

6. On the other hand, learned counsel for Respondents 1 and 2 oppose the contention made by learned counsel for the Appellants and submit that the Tribunal has wrongly considered 50% towards future prospect whereas looking to the age of

the deceased i.e. 22 years, it should have been 40% 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**.

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

8. As regards income of the deceased, the Claimants have pleaded that the deceased was earning Rs.30,000/- per month by working in Private Company but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income and also looking to the education of the deceased, the income of the deceased is considered as Rs.6,000/- per month as per minimum wages at the relevant time of skilled labour. Further, considering the age of the deceased i.e. 22 years and he was unmarried, 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; Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and other in Civil Appeal No. 9581/2018 arising out of SLP (Civil) No. 3192/2018** and *Pranay Sethi* (supra), the Claimants/Appellants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.6,000/- per month	Rs.72,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.72,000/- + Rs.28,800/-) Rs.1,00,800/-
3.	50% deduction towards personal and living expenses of Deceased	(Rs.1,00,800/- – Rs.50,400/-) Rs.50,400/-
4.	Multiplier of 18 applied	Rs.50,400/- x 18 = Rs.9,07,200/-
5.	Towards loss of estate and funeral expenses	Rs.30,000/-

6.	Towards loss of filial consortium @ Rs.15,000/- to Appellants/Claimants No. 1 and 2 each	Rs.30,000/-
7.	Towards medical expenses	Rs.1,00,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.10,67,200/-

9. Since the Tribunal has already awarded Rs.8,40,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,27,200/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge