

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1213 of 2017

1. Smt. Chhaya Bai Wd/o Late Shri Kishor Kumar Tumaane, aged about 28 years
2. Prerna Kishor Tumaane D/o Late Shri Kishor Kumar Tumaane, aged about 08 years
3. Harsh Kumar Tumaane S/o Late Shri Kishor Kumar Tumaane, aged about 06 years
Appellant No. 2 and 3 are minor through the mother (natural guardian)
Appellant No. 1 Smt. Chhaya Bai

All R/o- Ward No.-11, Station Road, Nagar Panchayat Bodri, Near Over Bridge Chakarbhatta, Bilaspur, District – Bilaspur (C.G.)

---- Appellants/Claimants

Versus

1. Tula Ram Tandon S/o Awadhram Tandon, R/o Village- Sendri, Post- Bijra, Police Station- Bhathapara (Gramin), District- Balodabazar- Bhathapara (C.G.)
(Driver of the Truck No. C.G.04-HX-3309)
2. CCR Logistics Pvt. Ltd., Through- Chintan P. Babariya S/o Pankaj V. Babariya, Satkaar Complex, First Floor, Ring Road No. 02 Bharpuri, Raipur (C.G.)
(Owner of the Truck No. C.G.04-HX-3309)
3. National Insurance Company Limited, Through: Divisional Manager, Division Office- Taha Complex, Vyapar Vihar Road, Bilaspur, Tahsil and District- Bilaspur (C.G.)
(Insurer of the Truck No. C.G.04-HX-3309)

---- Respondents/Non-applicants

For Appellants	:	Shri Anand Kesharwani, 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

1. This appeal is by the Claimants, unfortunate wife, daughter and son of deceased- Kishor Kumar Tumaane aged about 32 years, against the award dated 01.05.2017 passed by the Ninth Motor Accident Claims Tribunal, Bilaspur, District Bilaspur (C.G.) in M.A.C.T. No. 51 of 2016 awarding total compensation of Rs.6,01,000/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on non-applicants jointly and severally.
2. Facts of the case, in brief, are that on 03.01.2016 deceased- Kishor Kumar

Tumaane was coming from Chakarbhatha side on foot and he was on the correct side of the road. When the deceased reached near Nayapara Chowk situated on Raipur-Bilaspur Main Road, in the meantime, the offending vehicle Truck bearing registration No. CG-04/HX/3309 came from back side and was going towards Bilaspur and the same was being driven by non-applicant No. 1 in a rash and negligent manner, dashed Kishor Kumar Tumaane. As a result thereof, Kishor Kumar Tumaane sustained grievous injuries and when he was shifted to CIMS Hospital, he died on the way to hospital. At the time of accident, the offending vehicle Truck No. CG-04/HX/3309 was owned by non-applicant No.2 and insured with non-applicant No.3.

3. As submitted by both counsel, no counter appeal has been filed by the Respondents/non-applicants.

4. Learned counsel for the Appellants/Claimants submits that at the time of accident, the deceased was earning Rs.20-30 thousand per month by running a Mutton Shop in the name and style of "Munna Mutton Wala", but, income of the deceased has wrongly been considered by the Tribunal as Rs.4,500/- per month. He further submits that no amount towards future prospect has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

5. On the other hand, learned counsel for Respondent No.3/Insurance Company opposes the contention made by learned counsel for the Appellants and submits that the deceased was self employed person and proof of the income of the deceased has not been established by the Claimants before the Tribunal. Therefore, the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

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

7. It is not disputed that the deceased died on 03.01.2016 due to rash and negligent driving of the offending vehicle- Truck No. CG-04/HX/3309 by its

driver/non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3 and there is no breach of policy conditions. The evidence given by the Claimants was not challenged by the Insurance Company and no any counter appeal has been filed the Respondents/non-applicants.

8. As regards income of the deceased, as per statement of Chhaya Bai (AW-1) in para-3, the deceased was earning Rs.20-30 thousand per month by running a 'Mutton Shop', but 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. Further, considering the age of the deceased i.e. 32 years and he was married which is not disputed by the parties, the dependency, the nature of his job, in view of decisions in matters of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680** and **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, 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.	1/3rd deduction towards personal and living expenses of Deceased	(Rs.1,00,800/- – Rs.33,600/-) Rs.67,200/-
4.	Multiplier of 16 to be applied	Rs.67,200/- x 16 = Rs.10,75,200/-
5.	Conventional heads: Funeral expenses; loss of estate and loss of consortium	Rs.70,000/-
	Total Compensation	Rs.11,45,200/-

9. Since the Tribunal has already awarded Rs.6,01,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for

additional compensation of Rs.5,44,200/- with interest @ 7.5% per annum from the date of application till its 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

vatti