

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 119 of 2014**

1. Smt. Uttra Bai Sahu W/o Late Lekhram Sahu, Aged About 27 Years,
  2. Omprakash Sahu S/o Late Lekhram Sahu Aged About 10 Years,
  3. Shani Sahu S/o Late Lekhram Sahu Aged About 07 Years,
  4. Ku. Shalini Sahu D/o Late Lekhram Sahu Aged About 04 Years,
- Appellant No. 2 to 4 are Minor, Through natural Guardian Mother Smt. Uttra Bai Sahu Both are R/o Village and Post Tifra, Chowki-Tifra, Thana- Civil Line, Tahsil and District Bilaspur (C.G.).

**---- Appellants/Claimants****Versus**

1. Balram Toppo S/o Kenda Toppo R/o Ashok Vastralaya, Purana Bus Stand, Korba, Thana- Kotwali Korba, Alternative Address Patthalgaon, District Jashpur (C.G.).  
(Driver of the offending vehicle No. C.G.07 C 5883)
2. Smt. Laxmi Jain W/o Subhash Jain, R/o Ashok Vastralaya, Purana Bus Stand, Korba, Thana- Kotwali, Tahsil and District Korba (C.G.).
3. National Insurance Company Ltd., Through Divisional Manager, Divisional Office, Taha Complex, Vyapar Vihar Road, Bilaspur, Thana Civil Line, Tahsil and District Bilaspur (C.G.),  
(Insurance Company of the offending vehicle No. C.G.07 C 5883)

**---- Respondents**


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|--------------------------|---|---------------------------------|
| For Appellants           | : | Shri Yogendra Pandey, Advocate. |
| For Respondent No. 1 & 2 | : | None though served.             |
| For Respondent No. 3     | : | Shri B.N. Nande, Advocate.      |

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**Hon'ble Shri Gautam Chourdiya, J****Judgment On Board****05/03/2019**

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 22/09/2012 passed by the

III Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No. 242/2011 awarding the total compensation of Rs. 4,52,500/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non applicants jointly and severally.

02. As per claim petition, on 27/06/2011 Lekhram Sahu was going from Tifra to Bilaspur. However, on the way near Tifra over bridge, non applicant No. 1 Balram Toppo by driving vehicle Capsule Truck bearing No. CG 07 C 5883 in a rash and negligent manner dashed the motorcycle of Lekhram Sahu. As a result of this accident, Lekhram Sahu suffered grievous injuries and died on 28/06/2011 during treatment in Hospital.

03. On claim petition being filed by the claimants/ wife and children of the deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. 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. 10,000/-.

(ii) that 1/3rd deduction towards personal and living is also against the law and it should have been 1/4th.

(iii) the multiplier of 14 has wrongly been applied and considering the age of the deceased i.e. 36 years, it should have been 15.

(iv) that no amount towards future prospect has been granted to the claimants.

(v) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. No amount towards loss of parental consortium has been granted.

In support of above contention, reliance has been placed on the decisions of the *Hon'ble Supreme Court in the matters of Smt. Sarla Verma and others VS. Delhi Transport Corporation and another,*

***(2009) 6 SCC 121, National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680 and Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, in Civil Appeal No. 9581 of 2018 arising out of SLP (Civil) No.3192 of 2018.***

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the mattes has rightly awarded compensation which needs no interference by this Court.

06. Heard learned counsel for the parties and pursued the material available on record.

07. Counsel for the both the parties submit that an appeal i.e. MAC No. 1244/2012 was filed by non applicant No. 3/Insurance Company challenging the quantum of compensation and also for holding that there is contributing negligence on the part of the deceased. However, the said appeal has been dismissed by the Coordinate Bench by order dated 29/04/2013. Copy of the order dated 29/04/2013 has also been submitted by the Insurance Company before this Court.

08. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs. 10,000/- per month 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 has rightly been considered as Rs. 4,000/- per month as per minimum wages at the relevant time by the Tribunal. Further, considering the age of the deceased i.e. 36 years, the dependency, the nature of his job the decisions of the Hon'ble Supreme Court in Sarla Verma, Pranay Sethi and Magma General Insurance Co. Ltd (supra), the claimants are held entitled for compensation in the following manner :-

| Sl. No. | Heads                                                                            | Calculation (In rupees) |
|---------|----------------------------------------------------------------------------------|-------------------------|
| 01.     | Income of the deceased @ Rs.4,000/- per month.                                   | 48,000/-                |
| 02.     | 40% of (i) above to be added towards future prospects (48,000 + 19,200 = 67,200) | 67,200/-                |

| Sl. No. | Heads                                                                                              | Calculation<br>(In rupees) |
|---------|----------------------------------------------------------------------------------------------------|----------------------------|
| 03.     | 1/4th deduction towards personal and living expenses of the deceased<br>(67,200 – 16,800 = 50,400) | 50,400/-                   |
| 04      | Multiplier of 15 to be applied (50,400 x 15)                                                       | 7,56,000/-                 |
| 05.     | Towards loss of estate, loss of spousal consortium and funeral expenses                            | 70,000/-                   |
| 06.     | Towards loss of parental consortium @ Rs. 15,000/- each to claimants No. 2 to 4                    | 45,000/-                   |
|         | <b>Total compensation</b>                                                                          | <b>8,71,000/-</b>          |

Since the Tribunal has already awarded Rs. 4,52,500/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 4,18,500/- with interest @6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

**-Sd-  
(Gautam Chourdiya)  
Judge**