

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 746 of 2019**

1. Smt. Sarita Banjare W/o Late Shri Rupchand @ Raju Banjare Aged About 24 Years R/o Village And Post Uslapur, Police Station Chakarbhatha Tahsil Takhatpur, District Bilaspur Chhattisgarh.
2. Ku. Satrupa Banjare S/o Late Rupchand @ Raju Banjare Aged About 6 Years Minor Represented Through Legal Gaurdian And Mother Smt. Sarita Banjare wife of late Rupchand @ Raju Banjare, R/o Village And Post Uslapur Police Station Chakarbhata, Tahsil Takhapur, District Bilaspur Chhattisgarh.

----Appellants**Versus**

1. Sanjay Kumar @ Daran Kenwat S/o Chhedilal Kenwat Aged About 29 Years R/o Village Lokhandi, Police Station Sarkanda, Tahsil And District Bilaspur Chhattisgarh (The Then Driver Of Tractor No. CG10-D- 4296)
2. Nand Singh S/o Shri D. Singh R/o Village Newari, Post Malhar, Police, Station Malhar, Tahsil Masturi, District Bilaspur Chhattisgarh.(Registered Owner Of Trolley No. C.G10-ZG-1236)
3. Ifco Tokyo General Insurance Comapany Limited Through The Branch Manager, Branch Office Shop No. 345-347, Third Floor, Lalganga Shopping Mall, G.E. Road Raipur, District Raipur Chhattisgarh.(Insurer Of Tractor No. C.G. 10-D- 4296)
4. Rameshwar Prasad Banjare S/o Buchau Ram Banjare Aged About 50 Years
5. Smt. Gomti Bai W/o Rameshwar Prasad Banjare Aged About 48 Years

Nos.4 & 5 are R/o Village Lokhandi, Police Station Sarkanda,tahsil And District Bilaspur Chhattisgarh At Present R/o Village Kormi (Basiya), Post Kormi, Police Station Chakarbhata, Tahsil And District Bilaspur Chhattisgarh.

6. Nirmal Lal Masih S/o Late Narendra Lal Masih Aged About 34 Years R/o Village Lokhandi, Post Mangla, Police Station Sarkanda, Tahsil And District Bilaspur Chhattisgarh.

---- Respondents

For appellants	Shri S.K. Agrawal, Advocate.
For Respondents	None.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

15/04/2019

Heard on **I.A. No.1**

1. This is an application for condonation of delay of 177 days in filing the MAC.
2. For the reasons mentioned in the application which is duly supported by affidavit, the same is allowed and delay in filing the MAC is condoned.
3. Also, heard on admission.
4. This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 12.07.2018 passed by 7th Additional Motor Accident Claims Tribunal, Bilaspur, District Bilaspur, C.G. in Claim Case No.306/2014 awarding total compensation of Rs.8,76,400/- with interest @ 8 from the date of application till its realization, fastening the liability on non-applicant no.1 & non-applicant no. 7 legal heir of non-applicant-2/Owner-deceased jointly and severally.
5. As per claim petition, on 30.10.2009 deceased Rupchand @ Raju Banjare, aged about 19 years, earning Rs.4,500/- per month working as Labour, was employed under Narendra Lal Masih and while he was going in offending tractor

no.CG10-D-4296 attached with Trolley no.CG10-ZG-1236, he fell down due to rash and negligent driving by non-applicant no.1, as a result of which, he sustained grievous injuries on his body and during treatment he died. At the time of accident, offending vehicle was owned by non-applicant no.2 (non-applicant no. 7 legal heir of non-applicant-2/Owner-deceased) and insured with non-applicant no.4.

6. On claim petition being filed by the claimants i.e. wife and daughter of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.16,43,000/-, the Tribunal considering the evidence led by the parties passed an award as mentioned above in para 1 of this judgment.
7. Learned counsel for the appellants/claimants submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is assailing the award on the following grounds:-
 - (i) that the Tribunal has not properly assessed the income of the deceased whereas it should have been Rs.4,500/- per month looking to the job of the deceased.
 - (ii) that the amount awarded under the conventional heads is also on the lower side.
 - (iii) that the Tribunal has wrongly applied the multiplier of 18 whereas it should have been 19. Therefore, the amount of compensation is required to be enhanced

suitably.

8. Heard learned counsel for the appellants and perused the impugned award.
9. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.4,500/- per month as a Labour 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 been considered as Rs.4,000/- per month as per minimum wages at the relevant time by the Tribunal. The Tribunal considering the age of the deceased as 19 years on the basis of documents available on record, the dependency, keeping in view the decision of Hon'ble Supreme Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, applied multiplier of 18, deducted 1/3 towards personal and living expenses of the deceased and also awarded 40% towards future prospects. The Tribunal further awarded Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral and Rs.40,000/- towards spousal consortium. Considering the facts and circumstances of the case, the nature and quality of evidence adduced by the claimants as reflected from the impugned award and not disputed by the appellants/claimants' counsel, the amount of Rs.8,76,400/- awarded by the Tribunal as compensation with

interest @ 8% per annum from the date of application till realization, cannot be said to be inadequate or on the lower side. The said assessment appears to be just and proper, in conformity with the decisions of the Hon'ble Supreme Court in the matters of Sarla Verma (supra) & ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. Therefore, there is no need to interfere with the award impugned.

10. Resultantly, the appeal being without any substance is liable to be dismissed at the admission stage itself and is, accordingly, dismissed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh