

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 509 of 2017**

- Chola Mandlam M. S. General Insurance Company Limited Through Branch Manager, Address Simran Tower, In Front Of L.I.C. Office, Near Chhoti Railway Line, Pandri, Raipur, Distt. Raipur, ChhattisgarhInsurer Of Truck No. C.G.04 J C 9405,

---- Appellant**Versus**

1. Smt. Kusum Bai Wd/o Late Ravishankar Dhiwar, Aged About 23 Years
2. Lucky Kumar S/o Late Ravishankar Dhiwar, Aged About 3 Years
3. Smt. Ahilya Bai W/o Leelaram Dhiwar, Aged About 44 Years
4. Leelaram Dhiwar S/o Late Kunwar Singh Dhiwar, Aged About 45 Years

Res. No.2 is minor hence represented through his mother Smt. Kusum Bai, All R/o Near Dhobni Talab, Kurud, Police Station Kurud, Distt. Dhamtari (CG) – claimants

5. Harmanprit Singh S/o Avtar Singh, R/o D.N.K. Colony, Kondagaon, Distt. Kondagaon, ChhattisgarhDriver Of Truck No. C.G.04 J.C. 9405
6. Jitendra Golchha S/o Late Jasraj Golchha, R/o D-254, Taigore Nagar, Raipur, Thana Tikrapara, Distt. Raipur, ChhattisgarhOwner Of Truck No. C.G.04 J.C. 9405.

---- Respondents

For Appellant	:	Shri Rohitashva Singh, Advocate
For Respondent No.1 to 4	:	Shri Shivendu Pandya, Advocate.
For Respondent No.5 & 6	:	Shri PK Tulsyan, Advocate.

MAC No. 774 of 2017

1. Smt. Kusum Bai Dhiwar W/o Late Ravishankar Dhiwar, Aged About 23 Years
2. Lucky Kumar Dhiwar S/o Late Ravishankar Dhiwar, Aged About 3 Years

3. Smt. Ahiliya Bai Dhiwar W/o Leelaram Dhiwar, Aged About 44 Years
4. Leelaram Dhiwar S/o Late Kunwar Singh Dhiwar, Aged About 45 Years

Appellant No.2 being minor on behalf through his legal guardian mother Smt. Kusum Bai Dhiwar, appellant No.1.

All R/o Near Dhobni Talab, Kurud, Post Office & Police Station Kurud, Distt. Dhamtari (CG)

---- Appellants/claimants

Versus

1. Harmanpreet Singh S/o Avtar Singh, R/o D.N.K. Colony, Kondagaon, Police Station And Post Office Kondagaon, District Kondagaon, ChhattisgarhDriver Of Vehicle Truck Bearing Registration No. C.G.04 J C 9405,
2. Jitendra Golcha S/o Late Jashraj Golcha, R/o D-254, Tagore Nagar, Raipur, Police Station Tikrapara, Post Office Raipur, District Raipur, ChhattisgarhRegistered Owner Of Vehicle Truck Bearing Registration No. C.G.04 J C 9405,
3. The Chola Mandalam M.S. General Insurance Company Limited, Through Branch Manager, Branch Office, Address Simran Tower, In Front Of L.I.C. Office, Near Chhoti Railway Line, Pandri, Raipur, Post Office Raipur, Police Station Pandri, Raipur, Tahsil And District Raipur, ChhattisgarhInsurer Of Vehicle Truck Bearing Registration No. C.G.04 J C 9405

---- Respondents

For Appellants	:	Shri Shivendu Pandya, Advocate.
For Respondent Nos. 1 & 2	:	Shri PK Tulsyan, Advocate.
For Respondent No.3	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04/04/2019

As both these appeals filed under Section 173 of the Motor Vehicles Act, 1988 arise out of the award dated 23.1.2017 passed by 5th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.384/15, they are being disposed of by this common judgment.

02. As per claim petition, on 15.5.2015 Ravishankar Dhiwar, 26 years of age, earning Rs.18,000/- per month from pisciculture, by driving Van bearing No. CG 05 F 0346 with a moderate speed was going from Village – Kurud to Abhanpurt. However, on the way, near Sarkhi main road turning, non-applicant No.1 Harmanprit Singh by driving truck bearing No. CG 04 JC 9405 in a rash and negligent manner came from opposite direction and dashed the van of Ravishankar, as a result of which Ravishankar suffered grievous injuries, he was taken to hospital for treatment, however, during treatment on 20.5.2015 he succumbed to the injuries. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants, wife, son and parents of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties vide impugned award granted compensation of Rs.12,66,274/- with interest @ 9% per annum from the date of application till realization, fastening liability on non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner.

04. **MAC No.509/2017:** This appeal has been filed by the insurance company. Learned counsel for the appellant/insurance company submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is confining his argument to the extent that the Tribunal was not justified in granting 50% towards future prospects of the deceased because considering the age of the deceased i.e. 32 years and the nature of his job i.e. self-employed, in view of decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, it should have been 40%. Likewise, deduction of 1/4th by the Tribunal towards personal and living expenses of the deceased is also against the settled principle of law in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, and considering the fact that father of the deceased is 45 years, he cannot be said to be dependent on the deceased, and as such, there should have been 1/3rd deduction under this head. Lastly he submits that the amount awarded under the conventional heads is also on the

higher side and needs to be reduced suitably.

05. On the other hand, learned counsel for the respondents/claimants opposing the contention of the insurance company, submits that the claimants have also filed an appeal i.e. MAC No.774/2017 seeking enhancement of the compensation.

06. **MAC No.774/2017:** This appeal has been filed by the claimants. Learned counsel for the claimants submits that the deceased was in the business of pisciculture, thereby earning Rs.18,000/- per month but the Tribunal has considered his income only Rs.4,500/-. He submits that even as per minimum wages at the relevant time of skilled labour, the income of the deceased should have been considered as Rs.6000/- per month. He submits that as per evidence adduced by the claimants, father of the deceased was also dependent upon the deceased and no contrary evidence was adduced by the non-applicants. Therefore, deduction of 1/4th towards personal and living expenses by the Tribunal is just and proper. Lastly he submits that the amount awarded under the conventional heads is also just and proper in view of decisions of the Hon'ble Apex Court in *Pranay Sethi* (supra) and ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018.***

07. Learned counsel for the respondent/insurance company submits that in absence of any specific evidence regarding income of the deceased, the Tribunal has rightly considered his income as Rs.4,500/- on notional basis. Further, since the Tribunal has already awarded amount under the conventional heads on the higher side, there is no need to enhance the compensation.

08. Learned counsel for the respondents/driver & owner supports the impugned award.

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

10. As regards income of the deceased, though the claimants have

pleaded that the deceased was earning Rs.18,000/- per month through pisciculture, 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 of skilled labour. The claimants have categorically stated that father of the deceased i.e. claimant No.4, was also dependent upon the deceased and this statement remains unrebutted in the cross-examination. Therefore, considering the age of the deceased i.e.32 years, the dependency, the nature of his job and 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.6000/- per month.	72,000/- per annum
02.	40% of (i) above to be added towards future prospects.	72,000 + 28,800 = 1,00,800/-
03.	1/4th deduction towards personal and living expenses of the deceased	1,00,800 – 25,200 = 75,600/-
04.	Multiplier of 16 to be applied	12,09,600/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses	70,000/-
06.	Towards loss of parental consortium to claimant No.2	20,000/- (as awarded by Tribunal)
07.	Towards loss of filial consortium to claimants No.3 & 4 @ Rs.20,000/- each	40,000/- (as awarded by Tribunal)
08.	Towards medical expenses	1,74,274/- (as awarded by Tribunal)
	Total :	15,13,874/-

Since the Tribunal has already awarded Rs.12,66,274/-, after

deducting the same from the above amount, the additional compensation comes to Rs.2,47,600/-, which shall carry interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

11. In the result, both the appeals are allowed in part with modification in the impugned award to the above extent.

Sd/

(Gautam Chourdiya)

Judge