

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 852 of 2013

1. Dinesh Kumar Tiwari S/o Late Y.P. Tiwari Aged About 52 Years
2. Smt. Prabha Tiwari W/o Dinesh Kumar Tiwari Aged About 48 Years R/o Parijat Extention, Nehru Nagar, Bilaspur, P.S. Civil Line, Bilaspur, Tah. And Distt. (Revenue & Civil) Bilaspur C.G.,

---- Appellants

Versus

1. Sonsay Vishvakarma S/o Kanhaiyalal Vishvakarma Aged About 26 Years R/o Village Khapari, Post- Girhola, P.S. Nandini, Distt. (Revenue & Civil) Durg C.G. Temporary Address- A Pachpedhi Naka, Raipur, Tah. And Distt. (Revenue & Civil) Raipur C.G., B Mahesh Colony, Pulgaon, In Front Of Radhakrishna Temple, Durg, P.S. Pulgaon, Distt. (Revenue & Civil) Durg C.G., (Driver of the Dumper No. CG 04 ZA 1794)
2. Chinmay Chauhan S/o R.B. Chauhan R/o Pachpedhi Naka, Raipur, Tah. And Distt. (Revenue & Civil) Raipur C.G., Temporary Address- Mahesh Colony, Pulgaon, In Front Of Radhakrishna Temple, Durg, P.S. Pulgaon, Distt. (Revenue & Civil) Durg C.G. (Owner of the Dumper No. CG 04 ZA 1794)
3. Branch Manager I.C.I.C.I. Lombard General Insurance Co. Ltd., Branch Office- 3rd Floor Lal Ganga Shopping Mall Complex, G.I. Road, Pandari, Raipur, PS-Raipur Tah. And Distt. (Revenue & Civil) Raipur C.G. (Insurer of Dumper No.CG 04 ZA 1794)

---- Respondents

For Appellants	:	Shri Anand Kesharwani, Adv.
For Respondent Nos. 1 & 2	:	None.
For Respondent No.3	:	Shri V.K.Pandey, Adv.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

15/05/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 16.12.2011 passed by III

Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No.197/2011 awarding total compensation of Rs.1.90 lacs with interest @ 9% per annum from the date of award till realization, in case the awarded amount is not deposited within a month from the date of award, fastening liability on the non-applicants jointly and severally.

02. As per claim petition, on 23.1.2009 deceased Ravishankar Tiwari, 25 years of age, died in the motor vehicular accident caused due to rash and negligent driving of vehicle Dumper bearing No. CG 04 ZA 1794 by non-applicant No.1, which was owned by non-applicant No.2 and insured with non-applicant No.3.

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

04. Learned counsel for the appellants/claimants submits as under:

(i) that multiplier of 10 has wrongly been applied on the basis of age of parents of the deceased whereas considering the age of the deceased i.e. 25 years, it should have been 18.

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

(iii) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

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. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018.***

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 matter has rightly awarded compensation which needs no interference by this Court.

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

07. As regards income of the deceased, considering the evidence adduced by the parties, the same has rightly been taken as Rs.3000/- per month by the Tribunal. However, the Tribunal was not justified in applying multiplier of 10 based on the age of parents of the deceased and further erred by not granting any amount towards future prospects. Therefore, considering the age of the deceased i.e. 25 years as is evident from the claim petition, postmortem report (Ex.A/3) & primary school marksheet (Ex.A/13), 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. and* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.3000/- per month.	36,000/- per annum
02.	40% of (i) above to be added towards future prospects.	36,000 + 14,400 = 50,400/-
03.	50% deduction towards personal and living expenses of the deceased	25,200/-
04.	Multiplier of 18 to be applied	4,53,600/-
05.	Towards loss of estate and funeral expenses	30,000/-
06.	Towards loss of filial consortium @ Rs.15,000/- each	30,000/-
	Total	5,13,600/-

Since the Tribunal has already awarded Rs.1.90 lacs, after deducting the same from the above amount, the claimants are held

entitled for additional compensation of Rs.3,23,600/-. This entire amount of compensation 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.

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

Sd/

(Gautam Chourdiya)

Judge

Khan