

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 60 of 2013**

1. Smt. Purnima Yadav W/o Late Devkumar @ Jaikumar Yadav Aged About 35 Years
2. Kumari Santoshi Yadav D/o Late Devkumar @ Jaikumar Yadav Aged About 19 Years
3. Kumari Sangita Yadav D/o Late Devkumar @ Jaikumar Yadav Aged About 17 Years
4. Vikram Kumar S/o Late Devkumar @ Jaikumar Yadav Aged About 10 Years
5. Arvind Kumar Yadav S/o Late Devkumar @ Jaikumar Yadav Aged About 6 Years Applicant Nos. 3 to 5 Through- Mother Purnima Yadav, All R/o Hirri, P.S. Sarkanda, Tah. And Distt. Bilaspur C.G.

---Appellants**Versus**

1. Prakash Chanda @ Ashok S/o Radhelal Sahu R/o Village- Misda, P.S. And Tah. Nawagarh, Distt. Janjgir-Champa C.G.
2. Smt. Laxmin Bai W/o Bodhram Kesharwani Kera, P.S. And Tah. Nawagarh, Distt. Janjgir-Champa C.G.
3. Chola Mandalam M.S. General Insurance Company Ltd. Through- Main Branch Head Office- Dare House Second Floor No. 02, N.S.C. Bose Road, Chennai Tamilnadu.
4. Rameshwar Prasad Kashyap S/o Kuswaram Keshyap R/o Dindyal Awas Colony, Bahtarai, Post- S.E.C.L., P.S. Sarkanda, Other Address- Village And Post- Bundela, P.S. Sarkanda, Tah. And Distt. Bilaspur C.G.
5. Mulchand Kashyap S/o Jawahar Lal Kashyap Village And Post- Bundela, P.S. Pamgarh, Tah. Pamgarh, Distt. Janjgir-Champa C.G.

6. United India Insurance Company Through- Branch Manager. Divisional Office, Rajendra Nagar Chowk, Bilaspur, Tah. And Distt. Bilaspur C.G

---- Respondents

For Appellants	:	Shri Anand Kesharwani, Advocate.
For Respondent No.3	:	Shri Rohitashva Singh, Advocate.
For Respondent No.6	:	Shri H.B. Agrawal, Senior Advocate along with Ms. Iturani Mukherjee, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

10.04. 2019

This appeal is by the claimants against the award 9.10.2012 passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur, C.G. in Claim Case No.240/2011 awarding total compensation of Rs.3,40,500/- with interest @ 6 per annum from the date of application till realization, fastening liability on the non-applicant nos. 1 to 3/Driver, Owner and Chola Mandalam M.S. General Insurance Company Limited.

02. As per claim petition, on 29.12.2010 deceased Devkumar @ Jaikumar Yadaw, aged about 38 years, earning Rs.8,000/- by selling milk, was travelling in motorcycle Hero Honda CD Deleux CG11-CA-2300 as a pillion rider. However, on the way non-applicant no.1 Prakash Chandra @ Ashok by driving the vehicle bearing no.CG10-C-2288 in a rash and negligent manner dashed the said motorcycle. As a result of this accident, Devkumar @ Jaikumar Yadaw suffered grievous injuries and died during treatment. At the time of accident, offending vehicle was owned by respondent no.2 and insured with respondent no.3.

03. On claim petition being filed by the claimants i.e. wife and children of the deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.22,50,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

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.3,000/- whereas it should have been Rs.8,000/- which the deceased was earning by selling milk.

(ii) that 1/3rd deduction towards personal and living is also against the law and it should have been $\frac{1}{4}$ as the dependents are 5.

(iii) that multiplier of 14 has wrongly been applied and considering the age of the deceased, it should have been 15 as the deceased was 40 years of age as is mentioned in the postmortem report and other documents available on record.

(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.

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.***

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 matters 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, though the claimants have pleaded that the deceased was earning Rs.8,000/- per month by selling Milk but no documentary 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.4,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 40 years as per inquest Ex.P-3 and postmortem Ex.P-4, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma & Pranay Sethi* (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.	Rs.48,000/- per annum
02.	25% of (i) above to be added towards future prospects.	Rs.12,000/- Rs.48,000 + Rs.12,000 = Rs.60,000/-
03.	1/4 deduction towards personal and living expenses of the deceased	Rs.15,000/- Rs.60,000 – Rs.15,000 = Rs.45,000/-
04.	Multiplier of 15 to be applied	Rs.6,75,000/-

05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total compensation	Rs.7,45,000/-

Since the Tribunal has already awarded Rs.3,40,500/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,04,500/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh