

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 132 of 2015

1. Smt. Ramakanti Goutam wife of late Satrugan Goutam, aged about 29 years
2. Kumari Vaishnavi @ Ommal D/o Late Satrugan Goutam, aged about 10 years
3. Kumari Ruchi, D/o late Satrugan Goutam, aged about 4 years
4. Manoj Kumar S/o late Satrugan Goutam, aged about 2 months
Appellant No.2 to 4 are minor and they are represented by legal guardian their mother (Appellant No.1)
5. Smt. Parvati Bai wife of Prakash Goutam, aged about 62 years
All R/o Luchakipara Durg, District Durg (C.G.)

---- Appellants/Claimants

Versus

1. Dehraram Yadav, son of Kartik Ram Yadav, aged about 39 years, R/o Bhatgaon, P.S. Rudri, District Dhamtari (C.G.) - **Driver**
2. M.S. Devshri Agrotech, Rajdhani Road, Dhamtari (C.G.) - **Owner**
3. The Oriental Insurance Company Limited Dhamtari, Division Office, Dhamtari (C.G.) Through : The Oriental Insurance Company Limited Divisional Office, Old RTO Office, Near Rajendra Park, Durg (C.G.) - **Insurer**

---- Respondents/Non-applicants

For Appellants	:	Syed Majid Ali, Advocate
For Respondent 1	:	None
For Respondent No.2	:	Shri Shivendu Pandya, Advocate
For Respondent No.3	:	Shri Raj Awasthi, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

31.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by Second Additional Motor Accident Claims Tribunal, Durg (C.G.) vide award dated 27.08.2014 passed in M.A.C.C. No. 70 of 2012.
2. The Claimants/Appellants, unfortunate wife, children and mother of deceased- Satrugan Goutam, claimed compensation of Rs.40,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the death of deceased- Satrugan in the motor accident.

3. Facts of the case, in brief, are that on the date of accident i.e. 30.04.2012 deceased- Satrugan Goutam alongwith his friends namely Lakhan and Golu was going to Dhamtari from Raipur in the motorcycle bearing registration No. CG-04/DE/4689 in their side. Motorcycle was being driven by Lakhan. Satrugan and Golu were the pillion riders of the said motorcycle. As soon as they reached near Satpara culvert, offending vehicle Car bearing registration No. CG-05/Z/8811 was coming in a rash and negligent manner, seeing this Lakhan stopped the motorcycle on the side of the road taking full care and caution and stood on the side, but the offending vehicle rashly and negligently hit Satrugan Goutam. Deceased- Satrugan Goutam sustained grievous injuries and later on, he died. At the time of accident, Deshraram Yadav/non-applicant No.1 was driver, M.S. Devshri/non-applicant No.2 was owner and the Insurance Company/non-applicant No.3 was insurer of the offending vehicle.

4. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents/non-applicants.

5. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.5,05,000/- to the Claimants with interest @ 6% per annum from the date of registration of the claim petition till realization and liability fastened upon the Insurance Company/non-applicant No.3 to pay compensation.

6. Learned counsel for the Claimants/Appellants has challenged the award only on ground of income of the deceased. He submits that as per Ex.-P/6, the deceased was working in Yusuf Bhai & Company, Vegetable Commission Agent, and was earning Rs.8,000/- per month by doing the work of loading and unloading of vegetables in the said company and also used to carry the same from one place to another. Even, as per minimum wages prevalent at that time his monthly income ought to have been taken as Rs.6,000/- but the Tribunal has considered the same as Rs.3,000/- per month which appears to be on the lower side.

7. On the other hand, learned counsel for Respondents 2 and 3 oppose the contention made by learned counsel for the Appellants and submit that the Tribunal

has wrongly considered 50% towards future prospect whereas looking to the age of the deceased i.e. 32 years, it should have been 40%.

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

9. In the instant case, Certificate-Ex.-P/6 was produced before the Tribunal by the Claimants, but author of Ex.-P/6 has not been examined, therefore, no any opportunity was available to the non-applicants for examination and cross-examination of this witness (author of Ex.-P/6) regarding the said certificate.

10. Considering the facts and circumstances of the case and the fact that at the time of accident i.e. 30.04.2012 the deceased was earning Rs.8,000/- per month by doing the work of loading and unloading of vegetables in Yusuf Bhai & Company, Vegetable Commission Agent, and also used to carry the same from one place to another and the minimum wages & price index at the relevant time of unskilled labour, this Court is of the opinion that the income of the deceased considered by the Tribunal as Rs.3,000/- per month is on the lower side and it can safely be taken as Rs.4,500/- per month.

11. So far as argument advanced by learned counsel for Respondents 2 & 3 towards future prospect is concerned, in view of the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi (2017) 16 SCC 680*** and looking to the age of the deceased i.e. 32 years, there should be 40% addition to the annual income of the deceased towards future prospect.

12. Therefore, considering the age of the deceased i.e. 32 years, the dependency i.e. five, the nature of his job and the decisions of the Hon'ble Supreme Court in the matter of *Pranay Sethi (supra)* and ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, this Court is of the view that the Claimants/Appellants are entitled for compensation in the following manner:-

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.4,500/- per month i.e. Rs.54,000/-
2	40% toward future prospects added to the annual income	(Rs.54,000/- + Rs.21,600/-) Rs.75,600/-
3	1/4th deduction towards personal expenses of deceased	Rs.75,600/- – Rs.18,900/- Rs.56,700/-
4	Multiplier of 16 applied	Rs.56,700/- x 16 = Rs.9,07,200/-
5	Towards funeral expenses	Rs.25,000/- (as awarded by the Tribunal)
6	Towards loss of spousal consortium	Rs.10,000/- (as awarded by the Tribunal)
7	Towards loss of parental consortium	Rs.10,000/- (as awarded by the Tribunal)
8	Towards loss of filial consortium	Rs.10,000/- (as awarded by the Tribunal)
	Total Compensation	Rs.9,62,200/-

Since the Tribunal has already awarded Rs.5,05,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.4,57,200/-with interest @ 6% per annum from the date of registration of the claim petition till realization. However, rest of the conditions of the impugned award shall remain intact.

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

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge