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HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No.412 of 2014**

1. Ram Kumar Soura, S/o Ratilal Soura, Aged About 30 Years, R/o Village Kutela, P.S. Saraipali, Civil & Revenue District Mahasamund, Chhattisgarh (Driver).
2. Sushil Kumar Patel, S/o Baratram Patel, R/o Village Kutela, P.S. Saraipali, Civil & Revenue District Mahasamund, Chhattisgarh (Owner).

---- Appellants**Versus**

1. Smt. Budhiyarini Bai, W/o Jaduram, Aged About 55 Years, R/o Village Podapali, Post Navagarh, P.S. Saraipali, District Mahasamund, Chhattisgarh (Claimant).
2. Smt. Bundul, W/o Jaduram, Aged About 52 Years, R/o Village Podapali, Post Navagarh, P.S. Saraipali, District Mahasamund, Chhattisgarh (Claimant).
3. Tejram, S/o Jaduram, Aged About 35 Years, R/o Village Podapali, Post Navagarh, P.S. Saraipali, District Mahasamund, Chhattisgarh (Claimant).
4. Santram, S/o Jaduram, Aged About 30 Years, R/o Village Podapali, Post Navagarh, P.S. Saraipali, District Mahasamund, Chhattisgarh (Claimant).
5. Setram, S/o Jaduram, Aged About 25 Years, R/o Village Podapali, Post Navagarh, P.S. Saraipali, District Mahasamund, Chhattisgarh (Claimant).

---- Respondents

For Appellant	:	Shri Shikhar Sharma, Advocate.
For Respondents	:	Shri Devershi Thakur along with Shri Satendra Shriwas, Advocate.

Hon'ble Shri Justice Sanjay Agrawal

Award On Board

30.09.2019

1. This Miscellaneous Appeal has been preferred by the Non-Applicants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') questioning the legality and validity of the award dated 09.01.2014 passed by the Chief Motor Accident Claims Tribunal, Raipur (C.G.) (for short 'the Claims Tribunal') in Motor Accident Claim Case No.76/2012, by which the Claims Tribunal while allowing the claim in part has awarded the total amount of compensation to the tune of Rs.3,70,000/- with 6% interest per annum from the date of filing of the claim petition till its realisation. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.
2. Briefly stated the facts of the case are that on 23.04.2012 at 04:00 PM, the deceased Jaduram was going to village Darrabhatha by his bicycle along with his son Setram and as soon as he reached near the Sarangarh Road, it was dashed vehemently by the offending vehicle 'Caliber Bajaj Motorcycle' bearing its Registration No.CG-04-ZR-7687, owned by Non-Applicant No.2 namely Sushil Kumar Patel, and was being driven rashly and negligently by its driver Ram Kumar

Soura/Non-Applicant No.1. Owing to the alleged accident, the deceased sustained serious multiple injuries and expired on 04.05.2012 at his Village Podapali.

3. On account of the alleged accident, the claimants being legal representatives instituted a claim petition enumerated under Section 166 of the Act of 1988 alleging *inter alia* that the deceased, a 65 years old, was a carpenter by profession and used to earn Rs.60,000/- per annum and, thus, claimed total amount of compensation to the tune of Rs.4,79,000/- under various heads.
4. The aforesaid claim has been contested by the Non-Applicants by saying that the vehicle in question was not involved in the said accident and pleaded further that the deceased himself was responsible for the alleged accident. The claim petition, as made is, therefore, liable to be dismissed.
5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 23.04.2012 due to the rashness and negligent driving of the driver of the offending vehicle, resulting into the sad demise of said Jaduram, who was 65 years old at the relevant time and used to earn Rs.49,500/- per annum while working as a carpenter, and thus, awarded total amount of compensation to the tune of Rs.3,70,000/- with 6% interest per annum from the date of filing of the claim petition till its realisation.

6. Being aggrieved, Non-Applicants have preferred this appeal. Shri Shikhar Sharma, learned counsel for the Appellants submits that the award impugned as passed by the Claims Tribunal is apparently on higher side. According to him, while determining the amount of compensation, the Claims Tribunal ought to have deducted one third towards deceased's personal and living expenses. However, without deducting the same as such, the award impugned has been passed, therefore, it is liable to be modified.
7. On the other hand, learned counsel for the Respondents, while supporting the award impugned submits that just and proper compensation payable to the claimants has been awarded, therefore, it does not require to be interfered.
8. I have heard learned counsel for the parties and perused the entire record carefully.
9. The main contention as alleged by the counsel for the Appellants herein is that the amount of compensation as awarded without deducting one third towards deceased's personal and living expenses is liable to be set aside and/or modified.
10. From perusal of the record, it appears that the deceased Jaduram, a 65 years old, was a carpenter by profession and, therefore, his annual income has rightly been assessed by the Claims Tribunal to the tune of Rs.49,500/-. It appears further from perusal of the record that Setram, son of deceased, was

not dependent upon his father as evidenced by his statement, where he himself has admitted that he is a farmer and used to earn Rs.3,000/- per month. In view of the said fact, only three members, i.e. two sons and a widow alone were dependent upon the deceased Jaduram. It, however, appears that while determining the amount of compensation, deduction of one third towards personal and living expenses of the deceased has not been taken into consideration by the Claims Tribunal. The award impugned is, therefore, liable to be modified to the said extent alone.

11. Considering the facts and circumstances of the case, I am inclined to deduct one third of the annual income of the deceased towards his personal and living expenses in order to provide just and fair compensation payable to the claimants. In consequence, while deducting one third of it, i.e., Rs.16500 ($\text{Rs.}49,500 \times \frac{1}{3}$) in this regard, the annual dependency would, thus, be arrived at Rs.33,000/- ($\text{Rs.}49,500 - \text{Rs.}16,500$). As the deceased was 65 years old, therefore, by applying the multiplier of 5, the total dependency would come at Rs.1,65,000/- ($\text{Rs.}33,000 \times 5$). Consequently, the total amount of dependency as assessed by the Claims Tribunal i.e. Rs.2,47,500/- (wrongly mentioned as Rs.2,45,000/-) is hereby reduced to the extent of Rs.1,65,000/-. In so far as the amount of compensation as awarded of Rs.1,25,000/- towards conventional head is concerned, I do not find any infirmity in the same.

12. The claimants would, thus, be entitled to a total sum of Rs.2,90,000/-, instead of Rs.3,70,000/- as assessed by the Claims Tribunal. The said amount of compensation, i.e. Rs.2,90,000/- shall carry interest at the rate of 6% per annum from the date of filing of claim petition till its realisation.
13. The appeal is accordingly allowed in part to the extent indicated hereinabove. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge