

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1097 of 2014

1. Smt. Premkumari Wd/o Diharan Das, aged about 23 years
2. Krishna Das S/o Late Dilharan Das, aged about 01 years
3. Arjun Das S/o Late Dilharan Das, aged about 01 month

Appellant No. 2 and 3 are a Minor and present this appeal through his legal guardian mother Premkumari Wd/o Late Dilharan Das, aged about 23 years

4. Laung Das S/o Late Shyam Das, aged about 50 years
5. Smt. Indra Kuwar W/o Laung Das, aged about 48 years
6. Ghurvind Das D/o Laung Das, aged about 18 years
7. Seema Kumari Das D/o Laung Das, aged about 17 years

Appellant No. 7 is a minor and presented this appeal through her father namely Laung Das S/o Late Shyam Das, aged about 50 years

All are R/o Village: Kharipakhna, Katghora, Police Station: Katghora, Tahsil: Katghora, Revenue and Civil District Korba (C.G.)

---- Appellants/Claimants

Versus

1. Basant Kumar Paswan S/o Rambali Paswan, aged about 22 years, R/o Village Sohagpur, Police Station Urga Tahsil and District Korba (C.G.)
(Driver of the offending vehicle)
2. Smt Sangit Tiwari W/o Akhlesh Tiwari, aged about 27 years, R/o Village Nagoikhar, Darri, Police Station Darri, Tahsil Katghora, District Korba (C.G.)
(Owner of the offending vehicle)
3. Shri Ram General Insurance Company, Through: Branch Manager, Office of the Rajiv Plaza, Bus Stand, Bilaspur, Tahsil & District Bilaspur (C.G.)
(Insurer of the offending vehicle)

---- Respondents/Non-applicants

For Appellants	:	Ms. Uma Sahi, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

06.03.2019

1. This appeal is by the Claimants/Appellants against the award dated 28.06.2014 passed by the Additional Motor Accident Claims Tribunal, Katghora (C.G.) in M.A.C. No. 23 of 2012 awarding total compensation of Rs.5,16,000/- with

interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

2. As per claim petition, on 09.01.2012 deceased- Dilharan Das 25 years of age, earning Rs.8,000/- per month as Mason, died in the motor vehicular accident caused due to rash and negligent driving of vehicle Hyva Truck bearing registration No. CG-12/C/2998 by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3.

3. On claim petition being filed by the Claimants, unfortunate wife, children, mother, father, brother and sister of deceased under Section 166 of the Motor Vehicles Act, 1988, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

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

5. Learned counsel for the Appellants/Claimants submits as under:

- (i) that monthly income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- whereas it should have been Rs.5,000/- as per Minimum Wages Act;
- (ii) that 1/4th deduction towards personal and living is also against the law and it should have been 1/5th;
- (iii) that no amount towards future prospect has been granted to the Claimants;
- (iv) 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 place 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*** and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

6. 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.
7. Heard learned counsel for the parties and perused the material available on record.
8. As regard income of the deceased, though the Claimants have pleaded that the deceased was earning Rs.8,000/- per month as Mason and the certificate-Ex.-P/9 was produced before the Tribunal by the Claimants, but author of Ex.-P/9 has not been examined, therefore, no any opportunity was available to the non-applicants for adducing evidence in rebuttal. 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 of skilled labour. Further, considering the age of the deceased i.e. 25 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma* and *Pranay Sethi* (supra), the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased	Rs.4,000/- per month i.e. Rs.48,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.48,000/- + Rs.19,200/-) Rs.67,200/-
3.	1/5th deduction towards personal and living expenses of Deceased	(Rs.67,200/- – Rs.13,440/-) Rs.53,760/-
4.	Multiplier of 18 applied	53,760/- x 18 = Rs.9,67,680/-
5.	Under conventional heads i.e. loss of estate, funeral expenses & loss of consortium	Rs.70,000/-
	Total Compensation	Rs.10,37,680/-

9. Since the Tribunal has already awarded Rs.5,16,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.5,21,680/- with interest @ 6% per annum from the date of application till its realization. However, rest of the conditions of the impugned award shall remain intact.

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

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

vatti