

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 638 of 2014**

1. Triveni Kaiwart W/o Late Pardeshi Ram Kaiwart Aged About 42 Years
2. Ganesh Prasad Kaiwart S/o Late Pardeshi Ram Kaiwart Aged About 21 Years
3. Santoshi Kaiwart D/o Late Pardeshi Ram Kaiwart Aged About 21 Years
4. Naresh Prasad Kaiwart S/o Late Pardeshi Ram Kaiwart Aged About 18 Years
5. Sarita Kaiwart D/o Late Pardeshi Ram Kaiwart Aged About 16 Years
6. Pratima D/o Late Pardeshi Ram Kaiwart Aged About 14 Years
7. Mahesh S/o Late Pardeshi Ram Kaiwart Aged About 12 Years

Appellants no. 5 to 7 are Minor, Through-Legal Guardian Mother Smt. Triveni Kaiwart,

All are R/o Kathakoni, Main Road, Chakarbhattha, P.S. Chakarbhattha, Distt. Bilaspur C.G.

----Appellants**Versus**

1. Bhagwat Prasad Dahire S/o Khorbahra Dahire Aged About 44 Years R/o Pandaria, Ward No. 08, P.S. Pandaria, Distt. Kabirdham C.G.
2. Ramkumar Banjare S/o Falitram Banjare R/o Sanjay Nagar, Raipur, Tah., P.S. And Distt. Raipur C.G.
3. I.C.I.C.I. Lombard Motor Insurance Company Ltd. Vyapar Vihar, Bilaspur, Tah. And Distt. Bilaspur C.G.

---- Respondents

For Appellants	:	Shri Goutam Khetrapal, Advocate.
For Respondent No.1	:	None, though served.
For Respondent No.3	:	Shri Amrito Das, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board**

13.02.2019

1. The matter is listed for order on I.A. No.3, Application for condonation of delay in payment of process fee. Since, the liability has been fastened upon insurance company/non-applicant no.3 jointly and severally along with the non-applicants No. 1 & 2/Driver & Owner, this appeal has been filed by the claimants for enhancement. No counter appeal has been filed by the respondents as submitted by the parties and the contesting party i.e. insurance company is duly represented by its counsel, there is no need to issue notice to respondent no.2.
2. This appeal is by the claimants against the award dated 11.03.2014 passed by Additional Motor Accident Claims Tribunal (FTC), Bilaspur, C.G. in Claim Case No.2/13 awarding total compensation of Rs.3,89,400/- with interest @ 06 per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.
3. As per claim petition, on 10.08.2012 deceased Pardeshiram, aged about 45 years, earning Rs.12,500/- per month by running Hardware and Welding shop, died in the motor vehicular accident caused due to rash and negligent driving of bus bearing registration no.CG04-E-0908 by non-applicant No.1. At the time of accident, the offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.
4. On claim petition being filed by the claimants i.e. wife and children under Section 166 of the Motor Vehicles Act to the tune of Rs.17,00,000/-, the Tribunal considering the evidence led by

both the parties passed an award as mentioned above.

5. 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/- per month whereas it should have been Rs.15,000/- per month.
- (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. No amount towards loss of filial and other consortium has been granted.

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 & 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.***

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. No counter appeal has been filed by the respondents as submitted by both the parties.

8. Heard learned counsel for the parties and perused the material available on record.
9. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.12,500/- per month by running Hardware and Welding shop 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.4,500/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 50 years, the dependency i.e. 7, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi & Magma General Insurance Co. Ltd.* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No .	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.4,500/- per month.	Rs.54,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs.21,600/- Rs.54,000 + Rs.21,600 = Rs.75,600/-
03.	1/5 deduction towards personal and living expenses of the deceased	Rs.15,120/- Rs.75,600 – Rs.15,120 = Rs.60,480/-
04.	Multiplier of 13 to be applied	Rs.7,86,240/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses	Rs.70,000/-

06	Towards loss of parental consortium to claimants no. 2 to 7 @ Rs.15,000/- each.	Rs.90,000/-
	Total compensation	Rs.9,46,240/-

Since the Tribunal has already awarded Rs.3,89,400/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.5,56,840/- with interest @ 6% per annum from the date of application till 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.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh