

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 814 of 2014**

1. Mus Tuleshwari Bai W/o Late Bodhan Ram Rajware Aged About 26 Years
2. Kunti Rajware D/o Late Bodhan Ram Rajware Aged About 8 Years
3. Dashrath Rajware S/o Late Bodhan Ram Rajware Aged About 6 Years
4. Somar Sai S/o Late Bodhan Ram Rajware Aged About 4 Years
5. Dharampal S/o Late Bhuwal Rajware Aged About 55 Years
6. Devgun W/o Dharampal Rajware Aged About 54 Years

Appellants No. 2 to 4 minor through their natural guardian, mother appellant No.1 Smt. Tuleshwari Bai, widow of Late Bodhan Ram Rajware, All are resident of Rajkishore Nagar, Bilaspur, Tah. And Distt. Bilaspur C.G.

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Versus

1. Arvind Kumar Kamal S/o Bholelal Aged About 23 Years R/o Maksuda Baadh, P.S. Vithur, Distt. Kanpur U.P., Uttar Pradesh (Driver of Trailer No. HR55 D/6180)
2. Komal Gunani S/o Sumit Gunani R/o 84/81, G.T. Road, Jaarib Chauki, Kanpur, Distt. Kanpur U.P. (Owner of Trailer No. HR 55 D/6180)
3. Future General India Insurance Co. Ltd. Branch Manager, Maruti Business Park, Near Rajkumar College, G.E. Road, Raipur, Through Future General India Insurance Co. Ltd., Branch Manager, Bilaspur, Distt. Bilaspur C.G.

---- Respondents

For Appellants	:	Ms. Neeta Choubey, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No.3	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

20/02/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award 30th June, 2014 passed by Fourth Additional Member to First Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.19/2012 awarding total compensation of Rs.7,69,400/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly

and severally.

02. As per claim petition, on 8.8.2011 deceased Bodhanram Rajwade, 26 years, earning Rs.7,500/- per month as a driver, died in the motor vehicular accident caused due to rash and negligent driving of vehicle Trailer bearing No. HR 55D/6180, by non-applicant No.1, which was owned by non-applicant No.2 and insured with non-applicant No.3 at the relevant time.

03. On claim petition being filed by the claimants, wife, children and parents of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that the deceased was selected for general category labour in South East Coalfields Ltd., in future he would have earned as a labour in SECL at the rate of Rs.600/- per day, but the Tribunal has wrongly considered his income as Rs.4,500/- per month. No amount towards future prospect has been granted to the claimants, the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably and further the claimants are entitled for amount towards loss of filial consortium.

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, and 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,***

05. On the other hand, learned counsel for the respondent/insurance company submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation under all heads. However, deduction towards personal and living expenses should have been 1/4th in place of 1/5th as has been done by the Tribunal.

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.7,500/- per month as driver and was going to get appointment in SECL where his earning would have been Rs.600/- per day, but no documentary evidence in support thereof has been adduced. Further, as per settled law, for the purpose of computing compensation, income of the injured or deceased at the time of accident has to be taken into consideration. Therefore, in these circumstances, in absence of any proof regarding income, the Tribunal was justified in assessing the income of the deceased as Rs.4,500/- per month as per minimum wages at the relevant time of skilled labour. Further, considering the age of the deceased i.e. 29 years, the dependency i.e. six persons, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, *Pranay Sethi* and *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.	54,000/- per annum
02.	40% of (i) above to be added towards future prospects.	54,000 + 21,600 = 75,600/-
03.	1/4th deduction towards personal and living expenses of the deceased.	75,600 – 18,900 = 56,700/-
04.	Multiplier of 17 to be applied	9,63,900/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses.	70,000/-
06.	Towards loss of parental consortium to claimants No.2 to 4 @ Rs.15,000/-	45,000/-
07.	Towards loss of filial consortium to claimants No.5 & 6 @ Rs.15,000/-	30,000/-

	Total :	11,08,900/-
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Since the Tribunal has already awarded Rs.7,69,400/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,39,500/- 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