

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 207 of 2015**

1. Dashoda Bai W/o Shri Sukhram Verma, Aged about 45 years,
2. Sukhram Verma S/o Shri Ramprasad Verma, aged about-47 years,
3. Ku. Gangotri Verma D/o Shri Sukhram Verma, aged about 18 years,
4. Ku. Ganga Verma D/o Shri Sukhram Verma, D/o Shri Sukhram Verma, aged about 16 years, Minor- Through her father- Sukhram Verma S/o Shri Ramprasad verma, aged about-47 years.
5. Ku. Jamuna Verma D/o Shri Sukhram Verma, aged about-14 years, Minor- Through her Father- Sukhram Verma S/o Shri Ramprasad Verma, aged about-47 years,

All are Residence of Village- Bhathapara(Sewar), Post- Sewar, Police Station-Chakarbhatta, Tahsil- Bilha, Distt.- Bilaspur (C.G.).

---- Appellants/Claimants**Versus**

1. Raju Vishwakarma S/o Shri Purushottam, aged about-34 years, R/o Village- Lahaud, Police Out Post- Lawan, Police Station& Tahsil- Kasdol, Distt.- Baloda Bazar (C.G.)(Driver of Majada No. CG-04-J-8795).
2. Nitesh Keshrwani S/o Shri Narendra Kesharwani, R/o Purana Bus Stand Road, Baloda Bazar, Police Station- City Kotwali, Tahsil & Distt.- Baloda Bazar (C.G.). (Owner of Majada No. C.G.-04-J-8795).
3. The Branch Manager, the New India Insurance Company Ltd., Branch Office- Rama Trade Center, Beside Axix Bank, In front of Rajiv Plaza, Old Bus Stand Road, Bilaspur, Tahsil & Distt.- Bilaspur (C.G.) (Insurer of Majada No. C.G.-04-J-8795).

---- Respondents

For Appellants : Shri R. R. Soni, Advocate.
 For Respondent No. 3 :..Shri B. N. Nande, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04.02. 2019

1. This appeal is by the claimants against the award 17.12.2014 passed by the 3rd Additional Member of the Learned 1st Additional Motor Accident Claims Tribunal Bilaspur, Distt.- Bilaspur (C.G.) in Claim Case No.82/2014 awarding total compensation of 3,44,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1to 3 jointly and severely.

02. As per claim petition, on 16.01.2014, deceased Gangaram, aged about 22 years, earning Rs.12,000/- per month as fly ash operator, was going towards village Jokha with his friend Bhupendra Verma on motorcycle bearing registration No. CG04-EE/7534 as pillion rider died in the motor vehicle accident caused due to rash and negligent driving of vehicle bearing registration No. CG-04J/8795 by non-applicant No-Raju Vishwakarma.

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

04. It is submitted by learned counsel for both the parties that no counter appeal has been filed by the respondent.

05. Learned counsel for the appellants/claimants submits that the deceased was earning Rs.12,000/- per month as per Ex. P/11 certificate produced by the claimant but the Tribunal wrongly considered Rs. 3,000/- per month. He further submits that no amount towards future prospect has been granted to the claimants and 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.***

06. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that as per the statement of non applicant witness No. 3- Gautam Lamba he stated that the payment certificate Ex. P/11 was issued by him but he can not say in which month the payment as mention in the Ex. P/11 was paid to the deceased, therefore, the learned Tribunal rightly considered 3,000/- as notional income of the deceased and has rightly awarded compensation which needs no interference by this Court. Learned counsel for the Insurance Company further submits that there is no any established income was proved by the claimant therefore, future prospect can not be considered.

7. Heard learned counsel for the parties and perused the material available on record and the award impugned.

8. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.12,000/- per month as fly ash operator but no authentic document 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. 5,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased as per PM report Ex. P/5, rightly considered by the Tribunal as 22 years, the dependency, the nature of his job and keeping in view of 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.	Heads	Calculation
-----	-------	-------------

No.		(in rupees)
01.	Income of the deceased @ Rs. 5,000/- per month.	60,000/- per annum
02.	40% of (i) above to be added towards future prospects.	60,000+24,000 =Rs.84,000/-
03.	1/2nd deduction towards personal and living expenses of the deceased (bachelor)	Rs. 84,000/2= Rs. 42,000
04.	Multiplier of 18 to be applied	Rs. 42,000x18 = Rs.7,56,000/-
05.	Towards loss of estate and funeral expenses & filial consortium	Rs. 15,000+15,000+ 30,000/-= Rs. 60,000/-
	Total compensation	Rs. 8,16,000/-

Since the Tribunal has already awarded Rs.3,44,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,72,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact. It is directed that the Insurance Company shall pay the amount of compensation to the claimants along with interest within a period of two months from the order.

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

Sd/-

(Gautam Chourdiya)

Judge