

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1630 of 2015**

1. Upasha Bai W/o Late Santosh Kumar Jaiswal, Aged About 47 Years,
2. Durga Prasad S/o Late Santosh Kumar Jaiswal, Aged About 27 Years,
3. Satish Kumar S/o Late Santosh Kumar Jaiswal, Aged About 25 Years,
4. Chandra Kant S/o Late Santosh Kumar Jaiswal, Aged About 23 Years,

All are R/o Village Akhrar, Tahsil Lormi, District Mungeli(C.G.).

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

1. Sondas S/o Maniram Banjara, Aged About 30 Years Driver of Offending Vehicle Tractor No. C G 10 D 8347 and Trolley No. CG 10 D 8357, R/o Village Manki, Tahsil Lormi, District Mungeli (C.G.).
2. Rajaram S/o Janta Prasad Bhasker, Aged About 45 Years Owner Of Offending Vehicle Tractor No. C G 10 D 8347 and Trolley No. C G 10 D 8357, R/o Village Manki, Tahsil Lormi, District Mungeli (C.G.).
3. Megma H. D. I. Insurance Company Limited, Megma House No. 24 Park Street Calcutta (West Bengal).

---- Respondents

For Appellants	:	Shri A.L. Singroul, Advocate.
Respondent No. 3	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

24/04/2019

- 1) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated

19/10/2015 passed by Additional Motor Accident Claims Tribunal, Mungeli, District Mungeli (C.G.) in Claim Case No. 23/2013 awarding total compensation of 3,12,000/- 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 20/02/2013 at around 03:30 A.M. deceased Santosh Jaiswal, 52 years of age, earning Rs. 15000/- per month from business and agriculture work, was riding his motorcycle and going towards Lormi from village Akharar with a moderate speed. However on the way non-applicant No. 1./Sondas by driving Tractor bearing No. CG10 D 8347 and Trolley CG10 D 8357 (offending vehicle) in a rash and negligent manner dashed the deceased. As a result of this accident Santosh Jaiswal sustained grievous injury and died during the course of treatment in Hospital at Lormi. At the time of accident the offending vehicle was owned by non-applicant No. 2/Rajaram and insured with Non-applicant No. 3/Megma H.D.I. Insurance Co. Ltd.
- 3) On claim petition being filed by the claimants, wife and children under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
- 4) Learned counsel for the appellants/claimants submits as though he has raised various grounds in this memo of appeal, however, he is not pressed on those grounds and is assailing the awards

on the following grounds only :-

- i. that income of the deceased has wrongly been considered by the Tribunal as Rs. 3000/- per month; whereas it should have been Rs. 15,000 per month.
- ii. that the 1/4 deduction towards personal and living expenses is also against the law and it should have been 1/5 pursuant to the large family left by the deceased.
- iii. 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 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 and National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

- 5) Learned counsel for the respondent/Insurance Company oppose the contention made by the learned counsel for the appellants and submits that learned Tribunal has wrongly deducted 1/4 towards personal and living expenses of the deceased; whereas it should have been 1/3, which needs to be reduced suitably. Deceased was married person and applicant No. 2 to 4 are major self dependent.
- 6) Heard learned counsel for the parties and perused the material available on record.

- 7) As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs. 15000 per month from business and agriculture work but no documentary evidence 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. 4500/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 52 years, the dependency, the nature of his job as self employed person and the decisions of the Hon'ble Supreme Court in *Sarla Verma and Pranay Sethi* (supra), the claimants are held entitled for compensation in the following manner:-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs 4500 per month.	(Rs. 4500x12) = Rs. 54000 per annum
02.	10 % of (i) above to be added towards future prospects.	(Rs. 54000 + 5400) = Rs. 59,400/-
03.	1/3 deduction towards personal and living expenses of the deceased	(Rs. 59400 - 19800) = Rs. 39600/-
04.	Multiplier of 11 to be applied	(Rs. 39600 x 11) = Rs. 435600/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
	Total compensation	Rs. 5,05,600/-

Since the Tribunal has already awarded Rs. 3,12,000/-, after deducting the same from the above amount, the claimants

are held entitled for additional compensation of Rs. 1,93,600/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

**-Sd/-
(Gautam Chourdiya)
Judge**