

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1205 of 2015

1. Smt. Shanti Bai W/o Late Shankarlal Chouhan Aged About 48 Years
2. Santosh Chouhan Aged About 27 Years
3. Vinod Kumar Chouhan Aged About 20 Years
4. Pramod Kumar Minor Aged About 17 Years, occupation Student
5. Ashok Kumar Chouhan Minor Aged About 14 Years, occupation Student

Appellants No. 4 & 5 are minors and represented by their natural guardian (mother) Smt. Shanti Bai, W/o Late Shankarlal Chouhan.

Appellants No. 1 to 5 are Chouhan by Caste, R/o Village Dodki, Tahsil, P.S. and Post Sakti, Revenue & Civil District Janjgir Champa (CG)

---- Appellants/claimants

Versus

1. Saroj Kumar @ Saraj Kumar Sahu S/o Gopi Chand Sahu Aged About 27 Years Occupation - Driver, R/o Village - Dodki, P.S. And Tahsil - Sakti, Revenue And Civil District - Janjgir - Champa Chhattisgarh. Driver Of The Offending Vehicle.
2. Shiv Kumar Rathore S/o Ramprasad Rathore Aged About 49 Years Caste - Rathore, R/o Village Raliya Hardi Bazar, Tahsil - Katghora, Revenue And Civil District - Korba Chhattisgarh. Owner Of The Offending Vehicle.
3. Branch Manager, Chola Mandlam, M.S. General Insurance Company Limited, 2nd Floor, Simran Towers Pandari, Raipur, O. P. C., C. I. C. Building, Raipur, Revenue And Civil District - Raipur Chhattisgarh. Insurer Of The Offending Vehicle.

---- Respondents

For Appellants	:	Shri Rishi Sahu, Advocate.
For Respondent Nos. 1 & 2	:	None.
For Respondent No.3	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

26/03/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 16th July, 2015 passed by First Additional Motor Accident Claims Tribunal, Sakti, Distt. Janjgir-Champa (CG) in Claim Case No.34/2014 awarding total compensation of Rs.2.89 lacs 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 30.8.2014 at around 9.30 pm non-applicant No.1 Saroj Kumar by driving Bolero bearing No. CG 12 D 1506 in a rash and negligent manner dashed Shankarlal, as a result of which Shankarlal suffered grievous injuries and died during treatment. At the time of accident, the deceased was 53 years of age and earning Rs.9000/- per month as a mason. The offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants, wife and children 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 as under:

(i) that monthly income of the deceased has wrongly been considered by the Tribunal as Rs.3000/- whereas it should have been Rs.9000/- as the deceased was working as a mason.

(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.

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 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.

06. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

07. Heard learned counsel for the parties and perused the material available on record.

08. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.9000/- per month as a mason 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.5,500/- per month as per minimum wages at the relevant time of skilled labour. Further, considering the age of the deceased i.e. 53 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma* and *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.5,500/- per month.	66,000/- per annum
02.	10% of (i) above to be added towards future prospects.	66,000 + 6,600 = 72,600/-

03.	1/3rd deduction towards personal and living expenses of the deceased	72,600 – 24,200 = 48,400/-
04.	Multiplier of 11 to be applied	5,32,400/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses	70,000/-
06.	Towards loss of parental consortium	10,000/- (as awarded by Tribunal)
	Total:	6,12,400/-

Since the Tribunal has already awarded Rs.2.89 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,23,400/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/

(Gautam Chourdiya)

Judge