**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Miscellaneous Appeal (Civil) No. 701 of 2014**

1. Smt. Katika Bai W/o Late Anil Kumar, Caste- Satnami, Aged about 33 years
2. Kumari Manisha D/o Late Anil Kumar, Caste- Satnami, Aged about 11 years
3. Kumari Misha D/o Late Anil Kumar, Caste-Satnami, Aged about 7 years
4. Karan Kumar S/o Late Anil Kumar, Caste- Satnami, Aged about 4 years
5. Kunal S/o Late Anil Kumar, Caste- Satnami, Aged about 1 years

   Appellant No. 2 to 5 are minors through natural guardian mother Smt. Katika Bai
6. Gulluram S/o Late Nanuha, Aged about 56 years
7. Jhalar Bai W/o Gulluram, Aged about 52 years

   All R/o Village- Tikari, (Bhatapara), P.S. & Tahsil – Masturi, District Bilaspur (C.G.)

**---- Appellants/Claimants**

**Versus**

1. Rakesh @ Rajesh Kumar S/o Nukul Ram Satnami, Aged about 33 years, R/o Dekha "Do Muhani", P.S. Torwa, Tahsil & District Bilaspur (C.G.)

   **(Driver of Vehicle)**
2. Ram Swarup S/o Dayal Das, Aged about 55 years, R/o Dekha "Do Muhani", P.S. - Torwa, Tahsil & District Bilaspur (C.G.)

   **(Owner of Vehicle)**
3. Branch Manager, United India Insurance Co. Ltd., Branch Office, Mendekar Complex, Rajendra Nagar Chowk, Bilaspur (C.G.), (New office Guru Kripa Tower, Vyapar Vihar, Bilaspur (C.G.)

   **(Insurer of Vehicle)**

**---- Respondents/Non-applicants**

| | | |
|---|---|---|
| For Appellants | : | Shri Hanuman Agrawal, Advocate |
| For Respondents 1 & 2 | : | Shri Salvik Tiwari, Advocate appears on behalf of Shri Parag Kotech, Advocate |
| For Respondent No.3 | : | Smt. Chitra Shrivastava, Advocate |

**Hon'ble Shri Justice Gautam Chourdiya, J**

**Judgment on Board**

**14.01.2019**

**1.** The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the Third Additional Motor Accident Claims Tribunal, Bilaspur (C.G.)

vide award dated 25.08.2012 passed in Claim Case No.04 of 2012.

**2.** The Claimants/Appellants, unfortunate wife, daughters, sons, mother and father of deceased- Anil Kumar, who was aged about 35 years, claimed compensation of Rs.16,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of deceased in the motor accident.

**3.** Facts of the case, in brief, are that on 28.10.2011, deceased-Anil Kumar was going from Bilaspur to his village- Pataidihih on a motorcycle bearing registration No. CG-10/EF/4220, the said motorcycle was being ridden by deceased- Jawahar Kathle and deceased- Anil Kumar was pillion rider of the said motorcycle. As soon as they reached near Jondhra Chowk Main Road Masturi, one Tractor bearing registration No. CG-10A/9279 was coming from opposite direction which was being driven by Rakesh @ Rajesh Kumar/Respondent No. 1 in a rash and negligent manner and it dashed the motorcycle due to which both deceased- Anil Kumar and Jawahar Kathle died on the spot.

**4.** The learned Tribunal, in the impugned award, has awarded a compensation of Rs.3,76,500/- in favour of the Appellants/Claimants with simple interest @ 6% per annum from the date of application till realization. The Tribunal has also directed that Respondents are jointly and severally liable for payment of compensation to the Claimants/Appellants.

**5.** Learned counsel for the Claimants/Appellants submits that the accident occurred in the month of October, 2011, the deceased was doing the work of agriculture and was also doing the work of labour and was earning Rs.6,000/- per month. Even, as per minimum wages prevalent at that time his monthly income ought to have been taken at Rs.4,500/- but the Tribunal has considered the same as Rs.3,000/- per month which appears to be on the lower side. He also submits that as there are seven dependents on the deceased, the Tribunal has wrongly deducted 1/3rd towards personal expenses of the deceased and in view of ***Smt.***

***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and another, (2009) 6 SCC 121***, it should have been 1/5th. He further submits that looking to the age of the deceased i.e. 35 years, the Tribunal has wrongly applied the multiplier of 15 and it should have been 16. He further submits that the Tribunal has not awarded any amount towards future prospect and this may also be granted in this appeal in view of ***National Insurance Company Limited*** Vs. ***Pranay Sethi and Others, (2017) 16 SCC 680*** also. He also submits that under conventional heads, the Tribunal has awarded only Rs.2,000/- for funeral expenses, Rs.2,500/- for loss of estate, Rs.2,000/- loss of consortium, Rs.10,000/- for love and affection which is also on lower side and it may also be enhanced.

**6.** Learned counsel for the Respondent No. 3, however, opposes the appeal and submits that the learned Tribunal has rightly awarded the amount of compensation, therefore, it is just and reasonable, which does not call for any interference in the instant appeal.

**7.** I have heard the learned counsel appearing for the parties and perused the impugned award including the records of the Claims Tribunal.

**8.** No counter appeal has been filed by the Respondents.

**9.** *Firstly,* so far as argument relating to income of the deceased is concerned, the Tribunal has determined the monthly income of the deceased as Rs.3,000/-. As the contention of the Claimants is that he was doing the work of agriculture and was also doing the work of labour and was earning Rs.6,000/- per month, looking to the age of deceased i.e. 35 years and the price index at the relevant, this Court is of the opinion that the income considered by the Tribunal as Rs.3,000/- per per month is on the lower side and it can safely be taken as Rs.4,500/- per month.

**10.** *Secondly,* so far as argument relating to 1/3rd deduction towards personal expenses of the deceased is concerned, this Court is of the view that as there are seven dependents on the deceased, as per decision in the matter of *Smt. Sarla Verma* (supra), it can safely be taken as 1/5th towards personal expenses of the deceased.

**11.** *Thirdly,* so far as argument relating to multiplier is concerned, as per Ex.-P/2 morgue intimation and inquest report Ex.-P/3, the age of the deceased was shown as 35 years and also as per Ex.-P/4 postmortem report of the deceased, the age of the deceased was shown as 35 years. Considering the facts and circumstances of the case, particularly considering the Ex.-P/2, Ex.-P/3 and Ex.-P/4 regarding age of the deceased i.e. 35 years of age, the multiplier of 15 has wrongly been applied by the Tribunal, therefore, in view of the decision in the matter of *Smt. Sarla Verma* (supra), it can safely be taken as 16 in the instant matter.

**12.** *Fourthly,* so far as argument relating to non-grant of any amount towards future prospect is concerned, in view of the decision in the matter of *Pranay Sethi* (supra), considering the age of the deceased and nature of his job, there should be 40% addition to the annual income of the deceased towards future prospect.

**13.** *Lastly, s*o far as argument relating to conventional heads is concerned, the Tribunal has erred in awarding only Rs.2,000/- for funeral expenses, Rs.2,500/- for loss of estate, Rs.2,000/- for loss of consortium and Rs.10,000/- for love and affection which appears to be on lower side. Therefore, this Court is of the opinion that in view of the decision in the matter of *Pranay Sethi* (supra), the Claimants/Appellants are entitled to Rs.70,000/- for conventional heads.

**14.** On the basis of aforesaid discussions, this Court is of the view that the Claimants/Appellants are entitled for compensation in the following manner:

| **Sl.No.** | **Head** | **Calculation** |
|---|---|---|
| 1 | Income of the deceased | Rs.4,500/- per month i.e. Rs.54,000 per annum |

| | | |
|---|---|---|
| 2 | 40% towards future prospects added to annual income | (Rs.54,000/- + Rs.21,600/-) Rs.75,600/- per annum |
| 3 | 1/5th deduction towards personal expenses of the deceased | (Rs.75,600/- – Rs.15,120/-) Rs.60,480/- |
| 4 | Multiplier of 16 applied | Rs.60,480/- x 16 = Rs.9,67,680/- |
| 5 | For conventional heads | Rs.70,000/- |
| | **Total Compensation** | **Rs.10,37,680/-** |

Since the Tribunal has already awarded Rs.3,76,500/-, after deducting the same from the above amount, the Claimants are held entitled for additional compensation of Rs.,6,61,180/-.

**15.** Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimants/Appellants shall be entitled to a total enhanced amount of compensation of Rs.6,61,180/- with further direction of payment of simple interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment. However, rest of the conditions of the impugned award shall remain intact.

**16.** No order as to costs.

Sd/-

**(Gautam Chourdiya)**
Judge

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