

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 858 of 2013**

Maniram S/o Late Chhotelal Yadav Aged About 46 Years R/o.
Chanadongari, P.S. And Tah. Marwahi, Distt. Bilaspur C.G.

---- Appellant**Versus**

1. Bihari Kewat S/o Late Ramesharan Kewat Aged About 58 Years, Caste Kewat, R/o Village Amadand Near Chowki, Bus Stand, P.S. Rajnagar, Distt. Anuppur M.P.
2. Lalli Bai Wd/o Premsingh Yadav Aged About 50 Years R/o Village Sakola P.S. And Tah Pendra Distt. Bilaspur C.G.
3. Ramkali W/o Shri Buddhu Singh Yadav, Aged About 48 Years R/o. Village Beljhiriya P.S. & Tahsil Marwahi Bilaspur C.G.

---- Respondents

For Appellant : Shri Yogendra Chaturvedi, Advocate.

For Respondent No.1 : Shri Ashok Soni, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****14/05/2019**

- 1 Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 07.11.2012 passed by learned Additional Motor Accident Claims Tribunal, Pendraroad, District Bilaspur (for short 'the Tribunal') in Claim Case No.9/2012 whereby the Tribunal allowed claim application in part

and awarded total compensation of Rs.72,000/- along with interest @ 6% p.a. and fastened liability upon respondent No.1- herein to pay amount of compensation.

- 2 Brief facts relevant for disposal of this appeal are that on 09.09.2010, when deceased Jaimati Bai was returning from Village- Tendumuda after selling vegetable at that relevant time one motorcycle bearing registration No.MP18/MB/6425 (hereinafter shall be referred to as “the offending vehicle”), driven by respondent No.1-Bihari Kewat dashed her, as a result she fell down on the ground and sustained grievous injuries on her person. She was immediately taken to Community Health Centre, Marawahi where during the course of treatment she succumbed to her injuries.
- 3 Claimants, who are daughter and son of deceased, filed claim application under Section 166 of the Act of 1988 before competent Claims Tribunal claiming Rs.11,61,000/- as compensation under all heads on the grounds mentioned therein.
- 4 Respondent No.1, owner-cum-driver of offending vehicle even after service of notice did not appear before the Tribunal and, therefore, he was proceeded ex-parte.
- 5 Learned Claims Tribunal after appreciating pleadings and evidence placed on record by the claimants held that daughter of deceased being married is not entitled for any amount of compensation and claimant-son (appellant) is only entitled for compensation and accordingly awarded total sum of Rs. 72,000/- as compensation to him.

- 6 Learned counsel for appellant/claimant submitted that the Tribunal committed error in assessing monthly income of deceased as Rs.1,500/- ignoring the evidence available on record where it has been specifically mentioned that deceased was engaged in selling of vegetable in market. Apart from that, appellant/claimant had examined one witness namely Umesh Singh, who is resident of village-Tenumuda where accident took place, and he also stated in his evidence that deceased Jaimati Bai was engaged in business of selling vegetables. Hence, monthly income of deceased as assessed by the Tribunal i.e. Rs. 1,500/- is on lower side and needs to be increased.
- 7 Per contra, learned counsel appearing for respondent No.1 has supported impugned award and pleaded that the Tribunal has awarded suitable amount of compensation and as the amount of compensation awarded to the claimant is just and proper, therefore, it does not call for any interference. He further submits that appellant/claimant was not dependent upon the deceased.
- 8 I have heard learned counsel for the parties and perused the record.
- 9 Case of appellant/claimant from beginning is that his mother was doing business of selling vegetables. Appellant as well as deceased were residents of urban area. When once uncorroborated evidence has been brought on record by appellant/claimant that the deceased was engaged in the business of selling vegetables then appropriate amount of income is required to be assessed looking to the place where deceased was residing and doing business. Apart from that, this fact cannot be ignored

that the deceased being a female member certainly doing household work and she must be doing all necessary work to keep the house in order.

10 Taking into consideration overall facts of this case, particularly that deceased was engaged in business of selling vegetables and also rendering services at house, in the considered opinion of this Court, the Tribunal has committed an error in assessing income of deceased as Rs.1,500/- per month. Keeping in mind pleadings and evidence of the respective parties and also the fact that deceased was engaged in the business of selling vegetables, income of deceased can be taken as Rs.2,500/- per month and accordingly yearly income of deceased comes to Rs.30,000/- (2500x12). As the deceased was aged about 68 years, as mentioned in postmortem report, and also considering age of claimant, who is major son of deceased, in the considered opinion of this Court, appropriate deduction towards personal & living expenses of deceased would be half and not one-third, as done by the Claims Tribunal. Thereafter, after deducting half from the income of deceased towards his personal & living expenses, annual dependency would come to Rs.15,000/- (50% of 30000). As on the date of accident deceased was aged about more than 65 years, as mentioned in postmortem report, therefore, multiplier applicable would be 5 and by applying multiplier of 5, total loss of dependency income comes to Rs.75,000/- (15000X5). Besides this, the appellant/claimant is also entitled for Rs.30,000/- towards other conventional heads.

11 In view of above, now appellant/claimant will be entitled for total compensation of Rs.1,05,000/-, instead of Rs.72,000/- as awarded by the Tribunal. This amount of compensation will carry interest @ 6% p.a. from the date of application till its realization. Rests of the conditions of impugned award shall remain intact.

12 In the result, appeal is allowed in part and impugned award stands modified to the extent as indicated above.

Sd /-

(Parth Prateem Sahu)
Judge