

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 277 of 2016**

1. Smt. Manju Vatyani Wd/o. Rajendra Vatyani aged about 41 years,
2. Sumit Kumar Vatyani S/o. Late Rajendra Vatyani aged about 21 years;
3. Miss Neelam Vatyani D/o Late Rajendra Vatyani aged about 20 years,

All are Residence of Amapara Kanker District- North Bastar Kanker (C.G.).

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

1. Mohd. Junaid S/o Mohd. Farukh Haji aged about 32 years R/o. Sheetala Para Kanker District- North Bastar Kanker (C.G.). (Driver of the vehicle)
2. Mohd. Farukh S/o Haji Sukur Proprietor Firoz Construction Main road Kanker District- North Bastar Kanker (C.G.) (Owner of the vehicle)
3. The Oriental Insurance Co. Ltd. Branch Office M.B. Trade Centre Second floor Near Gandhi Chowk Dhamtari District- Dhamtari (C.G.) (Insurer of the vehicle).

---- Respondents

For Appellants : Shri P. Dhurandhar, Advocate.
 For Respondent No. 3 : Shri Deepak Gupta, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****29.01. 2019**

Heard on application for withdrawal of power on behalf of the appellants/claimants.

2. For the reason mentioned in the application, the same is allowed

and Shri Praveen Kumar Tulsyan, Advocate is permitted to withdraw his power on behalf of the appellants.

3. Shri Praveen Dhurandhar, Advocate submits that he has already filed his vakalatnama on behalf of appellants/Claimants.

4. This appeal is by the claimants against the award 03.07.2015 passed by Motor Accident Claims Tribunal, Uttar Bastar, Kanker in Claim Case No.56/2014 awarding total compensation of 4,17,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

05. As per claim petition, on 04.08.2014, deceased Rajendra Vattyani, aged about 42 years, earning Rs.10,000/- per month as grocery seller, died in the motor vehicle accident caused due to rash and negligent driving of vehicle bearing registration No. CG19E/0007 by non-applicant No.1.

06. 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.

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

08. Learned counsel for the appellants/claimants submits as under:

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3,500/- per month whereas it should have been Rs.10,000/- as grocery seller.

(ii) that no amount towards future prospect has been granted to the claimants.

(v) that 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.***

09. 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.

10. Heard learned counsel for the appellant and perused the material available on record and the award impugned.

11. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.10,000/- per month as grocery seller but no documentary or oral 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. 5,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased as per PM report, rightly considered by the Tribunal as 42 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. and (supra)*, the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs. 5,000/- per month.	60,000/- per annum
02.	25% of (i) above to be added towards future prospects.	60,000+ 15000=Rs. 75,000/-
03.	1/3rd deduction towards personal and	Rs. 75,000- 25,000=

	living expenses of the deceased	Rs. 50,000/-
04.	Multiplier of 14 to be applied	Rs. 50,000x14 = Rs.7,00,000/-
05.	Towards loss of estate, loss of consortium and funeral expenses & parental consortium	Rs. 70,000+ 20,000/-= Rs. 90,000/-
	Total compensation	Rs. 7,90,000/-

Since the Tribunal has already awarded Rs.4,17,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,73,000/- 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 date of copy of this order.

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

Sd/-

(Gautam Chourdiya)

Judge