

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 131 of 2017

1. Savitri Bai Lathiya, W/o Late Shri Manohar Lathiya, Aged about 38 years
2. Ritu D/o Late Shri Manohar Lathiya, Aged about 21 years
3. Mahesh S/o Late Shri Manohar Lathiya, Aged about 13 years

Appellant No.3 is minor through natural guardian mother Savitri Bai Lathiya

All R/o Suryavanshi Mohalla, Ward No. 11, Kosmanda, Champa, P.S. & Tahsil- Champa, District- Janjgir Champa (C.G.)

---- Appellants/Claimants

Versus

1. Premnath Bareth S/o Dhaja Ram Bareth, Aged about 32 years, Occupation- Driver, R/o Mukta Raja Baradwar, P.S.- Baradwar, District Janjgir Champa (C.G.)
(Driver of vehicle)
2. Lakesh Kumar Bareth S/o Pirath Ram Bareth, Occupation- Transporting, R/o Baradwar, P.S. - Baradwar, District- Janjgir Champa(C.G.)
(Owner of vehicle)
3. National Insurance Co. Ltd., Meenu Complex, Kosabadi, Main Road, Korba, District Korba (C.G.)
(Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri Hanuman Prasad Agrawal, Advocate
For Respondents No. 1 & 2	:	Shri Deepak Kumar Singh, Advocate
For Respondent No.3	:	Shri G.V.K. Rao, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Order

11.04.2019

I.A. No. 1 of 2017:

This is an application for condonation of delay of 110 day in filing the appeal.

For the reasons mentioned in the application which is supported by the affidavit, the same is allowed and delay in filing the appeal is condoned.

Heard on admission.

The appeal being arguable on merits is admitted for hearing.

Heard finally with the consent of learned counsel for the parties.

Judgment on Board

1. This is Claimants' appeal filed under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by the First Additional Motor Accident Claims Tribunal, Sakti, District Janjgir Chama(C.G.) in Claim Case No. 81

of 2015 vide award dated 30.06.2016.

2. As against compensation of Rs.20,82,825/- claimed by the Claimants, unfortunate widow, daughter and son of deceased- Manohar Lathiya, by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for death of Manohar Lathiya in the motor accident. The Tribunal awarded a total sum of Rs.3,66,000/- along with interest @ 6% per annum from the date of application till realization and fastened the liability upon all Respondents/non-applicant No.3 along with non-applicants No. 1 and 2 jointly and severally.

3. Brief facts of the case are that on 30.09.2015 deceased- Manohar Lathiya was coming his village Kosmanda toward Saragaon by his motorcycle Hero Honda bearing registration No. CG-11/CD/3452, when he reached Kosmanda near the culvert of Jamdinala, non-applicant No.1- Premnath Bareth, driver of the offending vehicle- Dumper bearing registration No. CG-11/AB/1364, owned by non-applicant No.2 and insured with non-applicant No. 3, driving the said offending vehicle in a rash and negligent manner, dashed the motorcycle of the deceased. As a result thereof, Manohar Lathiya sustained grievous injuries and succumbed to those injuries.

4. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

5. Learned counsel for the Appellants/Claimants submits that deceased- Manohar Lathiya, 45 years of age and was earning Rs.5,860/- per month as labour, but the income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- per month, whereas it should have been Rs.6,000/- per month looking to the minimum wages at the time of accident i.e. on 30.09.2015. He further submits that no amount towards future prospect has been granted to the Claimants, therefore, looking to the age of the deceased and he was a labour as self employed person, 25% towards future prospect should be granted to the Claimants. He also submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

6. On the other hand, learned counsel for Respondent No. 3/Insurance Company as well as Respondents 1 and 2 support the impugned award and submit that the Tribunal considering all the aspects of the matter has rightly awarded compensation which needs no interference by this Court.

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

8. As regards income of the deceased, though the Claimants have pleaded that the deceased was earning Rs.5,860/- per month as a labour 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.5,800/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 45 years of age, the dependency, the nature of his job and 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**, the Claimants are held entitle for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.5,800/- per month	Rs.69,600/- per annum
2.	25% towards future prospects added to annual income	(Rs.69,600/- + Rs.17,400/-) Rs.87,000/-
3.	1/3rd deduction towards personal and living expenses of Deceased	(Rs.87,000/- – Rs.29,000/-) Rs.58,000/-
4.	Multiplier of 14 applied	Rs.58,000/- x 14 = Rs.8,12,000/-
5.	<u>Conventional heads:</u> Loss of estate; funeral expenses and loss of consortium	Rs.70,000/-
	Total Compensation	Rs.8,82,000/-

9. Since the Tribunal has already awarded Rs.3,66,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for

additional compensation of Rs.5,16,000/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

vatti