

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 5 of 2014

1. Smt. Sukbati Mandavi Wd/o Jagmohan Mandavi, aged about 36 years
 2. Smt. Ghasanibai Wd/o Late Dukalu Singh Mandavi, aged about 65 years
 3. Miss Arati Mandavi D/o Late Jagmohan Mandavi, aged about 13 years
- Appellant No. 3 is minor through her mother Smt. Sukbati Mandavi (Appellant No.1)
- All are Residence of Village Kirgoli, P.S. and Tahsil Kanker, District North Bastar Kanker (C.G.)

---- Appellants/Claimants

Versus

1. Bhagwati Prasad Baghwani S/o Late Bholaram Baghwani, aged about 30 years, R/o Subhash Para Bhanupratappur, District North Bastar Kanker (C.G.) - **Driver**
2. Smt. Birasbai Jain W/o D.R. Jain, R/o Ward No. 12 Bhanupratappur, District North Bastar Kanker (C.G.) - **Owner**
3. Bharati Axa General Insurance Co. Ltd. Branch Office Chawala Complex 1st Floor Devendra Nagar Road Sai Nagar Raipur (C.G.) - **Insurer**

---- Respondents/Non-applicants

For Appellants	:	Shri Pravin Kumar Tulsyan, Advocate
For Respondents 1 & 2 :		None
For Respondent No.3	:	Shri P. Acharya, Advocate appears on behalf of Shri Amrito Das, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

10.01.2019

1. This appeal is by the Claimants/Appellants against the award dated 03.08.2013 passed by the Additional Motor Accident Claims Tribunal, North Bastar (C.G.) in Claim Case No. 03 of 2013 awarding total compensation of Rs.3,47,000/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the Respondents jointly and severally.
2. Claimants are wife, mother and daughter of deceased – Jagmohan Mandavi.
3. As per claim petition, on 24.01.2012 deceased- Jagmohan Mandavi, aged 45 years, earning Rs.6,000/- per month as labour in crusher-plant, died in the motor vehicular accident caused due to rash and negligent driving of vehicle -Bus bearing

registration No. CG-19/F/0132 by non-applicant No.1/Respondent No.1- Bhagwati Prasad Bhaghwani. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

4. On claim petition being filed by the Claimants/Appellants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

5. Learned counsel for the Appellants/Claimants submits that the income of the deceased has wrongly been considered as Rs.3,000/- by the Tribunal whereas it should have been Rs.6,000/-. He also submits that no amount towards future prospect has been granted to the Claimants. He further submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably and no amount towards loss of filial and other consortium has been granted. In support of his 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**.

6. On the other hand, learned counsel for Respondent No.3/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.

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

8. In the present case, the Claimants has pleaded that the deceased was aged about 45 years, but no any evidence has been adduced by the Claimants regarding proof of age of the deceased. As per postmortem report (Ex.P/6), the age of the deceased was mentioned as 50 years, therefore, the Tribunal has considered age of the deceased as 50 years and as per *Smt. Sarla Verma* (supra), has rightly

applied the multiplier of 13.

9. As regards income of the deceased, the Claimants have pleaded that the deceased was earning Rs.6,000/- per month as labour in cresher-plant and in support thereof, only income certificate (Ex.-P/7) which was given by Mohd. Hanif (AW-2) -owner of the Cresher-Plant has been produced by the Claimants but they have not proved that Mohd. Hanif was the actual owner of the cresher-plant and no any register regarding income of the deceased has been produced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4,700/- per month as per minimum wages at the relevant time.

10. So far as arguments relating to non-grant future prospect, low amount awarded under the conventional heads and non-grant of filial and other consortium are concerned, considering the age of the deceased i.e. 50 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma; Pranay Sethi and Magma General Insurance Co. Ltd.* (supra), the Claimants are held entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation
1	Income of the deceased	Rs.4,700/- per month i.e. Rs.56,400/- per annum
2	25% towards future prospect added to the annual income	(Rs.56,400/- + Rs.14,100/-) Rs.70,500/-
3	1/3rd deduction towards personal expenses of the deceased	(Rs.70,500/- – Rs.23,500/-) Rs.47,000/-
4	After multiplier of 13 applied	Rs.47,000/- x 13 = Rs.6,11,000/-
5	For conventional heads i.e. for funeral expenses, for loss of estate & for loss of spousal consortium	Rs.70,000/-
6	Towards loss of parental consortium to Claimant No.3	Rs.10,000/-
7	Towards loss of filial consortium to Claimant No. 2	Rs.10,000/-
	Total Compensation	Rs.7,01,000/-

Since the Tribunal has already awarded Rs.3,47,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.3,54,000/- with interest @ 7.5% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

12. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge