

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1335 of 2014**

1. Smt.Anita Gupta W/o Late Dilip Kumar Gupta Aged About 29 Years, occupation housewife,
2. Akash Kumar Gupta S/o Late Dilip Kumar Gupta Aged About 9 Years, occupation student,
3. Ku. Akanksha Gupta D/o Late Dilip Kumar Gupta Aged About 7 Years, occupation student
4. Narayan Prasad Gupta S/o Late Ramvriksh Sao Aged About 55 Years, occupation agriculture
5. Smt. Rajmuni Gupta W/o Narayan Prasad Gupta Aged About 53 Years, occupation housewife

Appellant nos. 2 & 3 are minors through their natural guardian mother Smt. Anita Gupta (appellant no.1)

All are R/o of Village- Vijay Nagar, P.S. Ramanujganj, Tah. Paal, Distt. Surguja C.G.

----Appellants**Versus**

1. Jalim Singh S/o Udham Singh Aged About 41 Years, occupation Driver, R/o Transport Nagar, Renukut Sonbhadra, Presently R/o Madhupur, P.S. Robertsganj, Distt. Sonbhadra U.P.
2. Firoz Khan S/o Sarif Khan Aged About 50 Years R/o Mahamaya Road Nagar, Ambikapur, Distt. Surguja C.G.
3. The Branch Manager, Bharatiya Exa Insurance Company Ltd., Branch Office At Devendra Nagar Road, Raipur, Distt. Raipur C.G.
4. The Branch Manager, United India Insurance Company Ltd, Branch Office At Brahma Road, Ambikapur, Distt. Surguja C.G.

---- Respondents

For Appellants	Ms Neha Verma, Advocate.
For Respondent No.3	Shri Ghanshayam Patel, Advocate.
For Respondent No.4	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

14/03/2019

This appeal is by the claimants against the award dated 19.09.2014 passed by the 5th Additional Motor Accident Claims Tribunal, Surguja, Ambikapur, C.G. in Claim Case No.03/2014 awarding total compensation of Rs.6,41,000/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants no.1 to 3 jointly and severally.

02. As per claim petition, on 04.02.2011 deceased Dilip Kumar Gupta along with his friends was going from Ambikapur to Vijay Nagar by driving bolero bearing no. CG15-B-4189. Since non-applicant no.1 had parked vehicle truck bearing no.CG15-A-6427 in a rash and negligent manner in front of road without parking light or indicator, vehicle of the deceased got dashed against the truck, as a result of which Dilip Kumar Gupta suffered grievous injuries leading to his death on the spot. At the time of accident, Deceased- Dilip Kumar Gupta was aged about 33 years, earning Rs.16,000/- per month by running grocery shop. The offending vehicle was owned by non-applicant no.2/respondent no.2 and insured with non-applicant no.3/respondent no.3.

03. On claim petition being filed by the claimants i.e. wife, children and parents of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.21,40,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellants submits that though he has raised various grounds in the memo of appeal, however, he is not

pressing all those grounds and is assailing the award only on the following grounds:

- (i) that income of the deceased has wrongly been considered by the Tribunal as Rs.4,000/- whereas it should have been Rs.16,000/- per month, looking to the job of the deceased.
- (ii) that 1/4th deduction towards personal and living is also against the law as the dependents are five.
- (iii) that no amount towards future prospect has been granted to the claimants.
- (iv) 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.***

05. Counsel for the respondent no.3 supports the impugned award so far as it relates to grant of compensation to the claimants.

06. Counsel for the respondent no.4 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly rightly fastened liability upon respondents no.1 to 3 and awarded compensation in favor of the claimants.

07. No counter appeal has been filed by the respondents in this case as submitted by both the parties.

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

09. So far as the income of the deceased is concerned, the claimants have pleaded that the deceased was running a grocery shop and thereby earning Rs.16,000/- per month 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 assessed by the Tribunal as Rs.4,000/- per month as per minimum wages at the relevant time is just and proper. Further, considering the age of the deceased i.e. 33 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi & Magma General Insurance Co. Ltd.* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.4,000/- per month.	Rs.48,000/-per annum
02.	40% of (i) above to be added towards future prospects.	Rs.19,200/- Rs.48,000 + Rs.19,200 = Rs.67,200/-
03.	1/4 deduction towards personal and living expenses of the deceased	Rs.16,800/- Rs.67,200 – Rs.16,800 = Rs.50,400/-
04.	Multiplier of 16 to be applied	Rs.8,06,400/-
05.	Towards loss of estate, loss of spousal	Rs.70,000/-

	consortium and funeral expenses	
06.	Towards loss of parental consortium to claimants no. 2 & 3 @ Rs.10,000/- each	Rs.20,000/-
07.	Towards loss of filial consortium to claimants no. 3 & 4 @ Rs.10,000/- each	Rs.20,000/-
	Total Compensation	Rs.9,16,400/-

Since the Tribunal has already awarded Rs.6,41,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,75,400/- 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.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh