

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 781 of 2014

1. Smt. Gangawati Yadav W/o Jaggnath Yadav Aged About 45 Years
2. Sabya Yadav D/o Late Maruti Yadav Aged About 70 Years
3. Smt. Ragmma Yadav W/o Sabya Yadav Aged About 65 Years
4. Vikas Yadav S/o Late Jaggnath Yadav Aged About 23 Years
5. Miss Bhagya Shree Yadav D/o Late Jaggnath Yadav Aged About 20 Years
6. Shri Niwas Yadav S/o Late Jaggnath Yadav Aged About 19 Years
7. Rahul Yadav S/o Late Jaggnath Yadav Aged About 17 Years

Appellant No.7 is minor through his mother Smt. Gangawati Yadav (appellant No.1).

All are residence of Bazar Para Muli Near Panchayat Distt. Bastar (CG)

---- Appellants/claimants

Versus

1. Mangalu Kashyap @ Gendlal S/o Avi Salam Aged About 35 Years Through Narayan Kurre, S/o Budhram Kurre, R/o Village Ghatkawali, Post- Kolchur, Distt. Bastar C.G. (Driver)
2. Narayan Kurre S/o Budhram Kurre R/o Village Ghatkawali, Post- Kalchur, Distt. Bastar C.G. (Owner)
3. Shri Ram General Insurance Co. Ltd. Through Branch Manager, E-8 Ricko Industrial Area, Seetapura, Jaipur (Rajasthan)

---- Respondents

For Appellants	:	Shri PK Tulsyan, Advocate.
For Respondent No.1 & 2	:	None though served.
For Respondent No.3	:	Shri Deepak Gupta, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

18/02/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award 28.4.2014 passed by Motor Accident Claims Tribunal, Bastar at Jagdalpur (CG) in Claim Case No. 85/2013 awarding total compensation of Rs.3.34 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company.

02. As per claim petition, on 13.3.2013 while deceased Jagannath Yadav, 51 years, earning Rs.10,000/- per month as Ayurvedic Doctor, by riding his motorcycle bearing No. CG 17 KB 6213 was coming back to his home, non-applicant No.1 Manglu Kashyap by driving tractor bearing No. CG 05 ZC 2248 & trolley bearing No. CG 05 C 4597 in a rash and negligent manner, dashed the motorcycle of Jagannath from behind. As a result thereof, Jagannath fell off the motorcycle, suffered grievous injuries and died on the spot itself.

03. On claim petition being filed by the claimants, wife, mother, father and children of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

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

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- per month whereas he was earning Rs.10,000/- per month as per Ex.A/9C being a medical practitioner.

(ii) that 1/3rd deduction towards personal and living is also against the law and it should have been 1/5th as the number of dependents in this case are seven.

(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.

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**, and **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**.

05. 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.

06. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

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

08. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.10,000/- per month as a medical practitioner, but no documentary evidence in support thereof has been adduced. Though as per Ex.P/9C, it appears that the deceased was practising in Ayurvedic medicines but there is nothing on record which could show the income of the deceased. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.5000/- per month as per minimum wages at the relevant time of skilled labour. Further, considering the age of the deceased i.e. 51 years, the dependency i.e. 7 persons, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma* and *Pranay Sethi* (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.	10% of (i) above to be added towards future prospects.	60,000 + 6,000 = 66,000/-
03.	1/5th deduction towards personal and living expenses of the deceased	66,000 – 13,200 = 52,800/-
04.	Multiplier of 11 to be applied	5,80,800/-
05.	Towards Funeral expenses	25,000/- (as awarded by Tribunal)
06.	Towards loss of spousal consortium to claimant No.1/wife	25,000/- (as awarded by Tribunal)
07.	Towards loss of parental consortium to claimants No.4 to 7/children @ Rs.5,000/- each.	20,000/- (as awarded by Tribunal)
	Total :	Rs.6,50,800/-

Since the Tribunal has already awarded Rs.3.34 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,16,800/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/

(Gautam Chourdiya)

Judge