

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1368 of 2016

1. Smt. Gaytri Bai W/o Late Chaitram Vishwakarma, Aged About 22 Years Caste- Vishwakarma,
2. Hitesh Vishwakarma S/o Late Chait Ram Vishwakarma, Aged About 2 Years Caste Vishwakarma
3. Nand Lal Vishwakarma S/o Late Kaju Ram Vishwakarma, Aged About 45 Years
4. Smt. Kumari Bai W/o Nand Lal Vishwakarma, Aged About 44 Years Caste- Vishwakarma,
5. Kumari Kanti Vishwakarma D/o Nand Lal Vishwakarma, Aged About 18 Years Caste- Vishwakarma,
6. Kumari Janki Vishwakarma D/o Nand Lal Vishwakarma, Aged About 16 Years Caste- Vishwakarma,
7. Kumari Shanti Vishwakarma D/o Nand Lal Vishwakarma, Aged About 14 Years Caste- Vishwakarma,

Applicant No.2 through his guardian mother Smt. Gaytri Bai Vishwakarma, and applicants No. 6 & 7 are through their father Nand Lal Vishwakarma.

All R/o Village Udagi (Aamanara), Post Nirtu, PS Sipat, Distt. Bilaspur (CG)

---- Appellants/claimants

Versus

1. Ramesh Kumar Kashyap S/o Mahettar Lal Kashyap, Aged About 26 Years R/o Village Kirari Tahsil And P.S. Akaltara Distt. Janjgir Champa, ChhattisgarhDriver Of The Vehicle Truck No. C.G.11/ A B-2866
2. Sumeet Singh Chandel S/o Bal Krishna Chandel, R/o Village-Tarud, P.S. And Tahsil Akaltara, Distt. Janjgir-Champa, ChhattisgarhOwner Of The Vehicle Truck No. C.G.11/ A B-2866.
3. Branch Manager, H.D.F.C. Ergo General Insurance Company Limited, Through Branch Office Rani Laxmi Nagar, 1st Floor Quarter No. 730/2, D.2, P.H.-22, Ward No.30, Rani Laxmi Nagar Bilaspur, Pin No. 495001, Near Land Mark Rama Magneto Mall, Rani Laxmi Nagar, Bilaspur, ChhattisgarhInsurer Of The Vehicle Truck No. C.G.11/ A B-2866.

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For Respondent No.1 & 2	:	Shri P.M. Shrivastava, Advocate.
For Respondent No.3	:	Shri Amrito Das & Shri Abhyuday Singh, Advocates.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

05/02/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award 27th June, 2016 passed by Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No. 564/2015 awarding total compensation of Rs.6,78,000/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicant No.3 jointly and severally along with non-applicants No. 1 & 2/driver & owner.

02. As per claim petition, on 19.9.2015 deceased Chaitram, 25 years, earning Rs.6000/- per month as a labour under a railway contractor, died in the motor vehicular accident caused due to rash and negligent driving of vehicle truck bearing No. CG 11 AB 2866, by non-applicant No.1, which was owned by non-applicant No.2 and insured with non-applicant No.3.

03. 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.

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.4,500/- whereas it should have been Rs.6,000/-.
- (ii) that no amount towards future prospect has been granted to the claimants.

(iii) 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 parental 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, 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.***

05. On the other hand, learned counsel for the respondents support the impugned award and submit that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

07. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.6,000/- per month as a labour 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.5,500/- per month as per minimum wages at the relevant time of the skilled labour. Further, considering the age of the deceased, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *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 (in rupees)
01.	Income of the deceased @ Rs.5,500/- per month.	66,000/- per annum
02.	40% of (i) above to be added towards	66,000 + 26,400 =

	future prospects.	92,400/-
03.	1/3rd deduction towards personal and living expenses of the deceased	92,400 – 30,800 = 61,600/-
04.	Multiplier of 18 to be applied	11,08,800/-
05.	Towards loss of estate, loss of spousal consortium and funeral expenses	70,000/-
06.	Towards loss of parental consortium to claimant No.2	15,000/-
07.	Towards loss of filial consortium to claimants No.3 & 4 @ Rs.15,000/- each.	30,000/-
	Total:	12,23,800/-

Since the Tribunal has already awarded Rs. 6,78,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 5,45,800/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/

(Gautam Chourdiya)

Judge