

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1042 of 2016

1. Smt. Rama Bai W/o Late Purushottam Patel, Aged About 40 Years
 2. Ashish Patel S/o Late Purushottam Patel, Aged About 22 Years
 3. Chugeshwari @ Sulekha D/o Late Purushottam Patel, Aged About 18 Years
 4. Reena Patel D/o Late Purushottam Patel, Aged About 10 Years Minor,
 5. Reeti Patel D/o Late Purushottam Patel, Aged About 10 Years Minor,
 6. Smt. Sohaga Bai W/o Late Ramji Patel, Aged About 65 Years
- No. 4 & 5 are minor represented through mother Smt. Rama Bai. All are resident of Sheetlanagar Ward No.09, Parpodi, P.S and Post Parpodi, Tahsil-Saja, Distt. Bemetara (CG), at present Patelpara, Baghera, Ward No.55, Tahsil & Distt. Durg (CG)

---- Appellants/claimants

Versus

1. Chhoturam Sarthi S/o Heeralal Sarthi, Aged About 27 Years R/o Ward No.16, Douchaura, Khairagarh, Police Station And Tahsil-Khairagarh, District- Rajnandgaon, ChhattisgarhDriver-Motorcycle No. C.G./08-S /1061,
2. Ramesh Patel S/o Late Chowaram Patel, Aged About 46 Years R/o Ward No.16, Douchaura, Khairagarh, Police Station And Tahsil- Khairagarh, District- Rajnandgaon, ChhattisgarhOwner- Motorcycle No. C.G./08-S /1061,
3. The Oriental Insurance Company Limited, Through Branch Manager, Address- Parmanand Bhawan, Near Rajendra Park Chowk, G.E.Road, Durg, Tahsil And District- Durg, ChhattisgarhInsurer- Motorcycle No. C.G./08-S /1061,

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For Respondent Nos. 1 & 2	:	None though served.
For Respondent No.3	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

08/03/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award 5.5.2016 passed by 4th Additional Motor Accident Claims Tribunal, Durg in Claim Case No. 94/2015 awarding total compensation of Rs.8,59,500/- with interest @ 6% per

annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner.

02. As per claim petition, on 8.7.2015 Purushottam Patel, aged about 45 years, earning Rs.8000/- by working in a private institute Sunshine, along with his friends was going on foot. However, on the way, non-applicant No.1 Chhoturam Sarthi by riding motorcycle bearing No. CG 08 S 1061 in a rash and negligent manner dashed Purushottam Patel. As a result of this accident, Purushottam suffered grievous injuries and succumbed to the same during treatment in hospital. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

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

04. Learned counsel for the appellants/claimants submits that income of the deceased has wrongly been considered by the Tribunal as Rs.4,500/- per month whereas he was earning Rs.8,000/- per month by working in a private institute Sunshine and even as per minimum wages at the relevant time of skilled labour, it comes to Rs. 7,000/- per month. Therefore, he submits that the amount of compensation may be enhanced accordingly. He submits that under the other heads, the Tribunal has awarded just and proper compensation.

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 respondent/insurance company opposing the contention of the appellants submits that since

the claimants did not prove the profession and income of the deceased, the Tribunal has rightly considered his income as Rs.4,500/- per month as per minimum wages of labour. He submits that in this case the Tribunal has wrongly awarded 30% towards future prospect and as per decision in Pranay Sethi (supra), in view of age of the deceased i.e. 46 years and nature of his job, it should have been 25%. Lastly he submits that the amount awarded under the conventional heads is also on the higher side and needs to be reduced suitably.

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.8,000/- per month by working in private institute Sunshine, 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 of unskilled labour. Further, considering the age of the deceased i.e. 46 years, 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.5,800/- per month.	69,600/- per annum
02.	25% of (i) above to be added towards future prospects.	69,600 + 17,400 = 87,000/-
03.	1/4th deduction towards personal and living expenses of the deceased	87,000 – 21,750 = 65,250/-
04.	Multiplier of 13 to be applied	8,48,250/-

05.	Towards loss of estate, loss of spousal consortium and funeral expenses	70,000/-
06.	Towards loss of parental consortium to claimants No. 2 to 5 @ Rs.20,000/- each.	80,000/-
07.	Towards loss of filial consortium to claimant No.6	20,000/-
	Total:	10,18,250/-

Since the Tribunal has already awarded Rs.8,59,500/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.1,58,750/- 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