

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1008 of 2013**

1. Smt. Sujata Baksi W/o Late Hemant Kumar Baksi Aged About 35 Years,
2. Diwakar Baksi S/o Late Antaryami Baksi Aged About 66 Years,
3. Smt. Bonita Baksi W/o Diwakar Baksi Aged About 60 Years,
4. Miss Hardo Hanshani D/o Late Hemant Baksi Aged About 5 Years, Appellant's No. 4 is Minor, Through her Mother Smt. Sujata Baksi (Appellant No. 1)

All are R/o village Karan Sai, Kotpad, Distt. Koraput (Orissa).

---- Appellants/Claimants**Versus**

1. Sanjay Kumar Paikara S/o Ram Shyam Ray Paikara Aged About 32 Years R/o Opposite Sandeep Dairy Heerapur, P.S. Amanaka, Raipur, Distt. Raipur (C.G.) (Driver)
2. Vikram Singh S/o Lakkha Singh Aged About 32 Years R/o C.H. 572-573 Tatibandh, Raipur, Distt. Raipur (C.G.) (Owner)
3. Branch Manager, Through The New India Insurance Co. Ltd., Near Jhankar Talkies, Jagdalpur, Distt. Bastar (C.G.) (Insurer)
4. Rana Ram S/o Jeetaram R/o Village Bhatipara, Bastar, Police Chowki- Bastar, Distt. Bastar (C.G.)
5. Jeetaram S/o Budhram Aged About 58 Years R/o Village Bhatipara, Bastar, Police Chowki- Bastar, Distt. Bastar (C.G.)
6. Branch Manager, Through The National Insurance Co. Ltd., Gurunanak Chowk, Jagdalpur, Distt. Bastar (C.G.)

---- Respondents

For Appellants	:	Shri Praveen K. Dhurandhar, Advocate.
For Respondent No. 3	:	Shri H.B. Agrawal, Senior Advocate with Ms. Itu Rani Mukherjee, Advocate
For Respondent No. 6	:	Shri Dashrath Gupta, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board**03/05/2019**

- 1) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 03/08/2013 passed by First Additional Motor Accident Claims Tribunal Bastar, Jagdalpur (C.G.) in Claim Case No. 31/2012 awarding total compensation of Rs. 4,26,600/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 to 3 for 60%, non-applicant Nos. 4, 5 & 6 for 30% and 10% upon driver of Motorcycle jointly and severally.
- 2) As per averments in the claim petition, on 20/05/2012 at around 05:00 PM, deceased Hemant Kumar Bakshi, aged about 38 years, earning Rs. 7,000/- per month from Cloth Business, was sitting in motorcycle Splendour bearing No. CG07 LL 1410 as pillion rider and motorcycle was driven by Dayadan with a moderate speed. However, when he was going to his home village Kotpad from village Bhond when he reached near Thana Para Bastar Maruti Car bearing No. CG04 HB 7388 was stand on the main road, therefore Dayadan dashed to the Maruti Car from the back side and stopped the motorcycle but at the very same time the Non-applicant No.1/Sanjay Kumar Paikara, who was driving the vehicle Trailer bearing No. CG04 JC 2245 rashly and negligently dashed the deceased. Consequently, deceased Hemant Kumar Bakshi and Dayadan suffered grievous injury and Hemant Kumar Bakshi died on the spot. Trailer was owned by non-applicant No. 2/Vikram Singh and insured with non-applicant No. 3/New India Insurance Co. Ltd. Maruti Van was owned by non-applicant No. 4/ Rana Ram and insured with non-applicant No. 6/New National Insurance Co. Ltd.
- 3) On claim petition being filed by the claimants' wife, children and parents 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.

- 4) Learned counsel for the appellants/claimants has raised various grounds in this memo of appeal, however, he is not pressing on those grounds and is assailing the awards on the following grounds only:-
 - i. that on the time of accident deceased Hemant Kumar Bakshi was a pillion rider in motorcycle and he has not any contributory negligence in part of himself. Learned Tribunal deducted 10% liability on the part of motorcycle rider (driver) but motorcycle rider was not made party in claim petition and for 10% compensation is deducted from claimants, therefore, aggrieved by this award appeal filed by the claimants.
 - ii. that monthly income of the deceased has wrongly been considered by the Tribunal as Rs. 3000/-; whereas it should have been Rs. 5000/-, looking to the minimum wages at the relevant time.
 - 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, 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.***

- 5) On the other hand, learned counsel for the respondent No. 3/non-applicant No. 3 Insurance Company and respondent No. 6/non-applicant No. 6 opposed the contention made by the

counsel for the appellant and support the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

- 6) Heard learned counsel for the parties and perused the material available on record.
- 7) No counter appeal has been filed by the respondents as submitted by counsel for the parties.
- 8) It is not disputed by both the parties the deceased Hemant Kumar Bakshi was a pillion rider in motorcycle and said motorcycle driven by Dayadan subscriber of FIR (Ex. A-3), Dayadan also admitted and mentioned this fact that in FIR (Ex. A-3) deceased was a pillion rider and vehicle was driven by Dayadan. As per Charge Sheet (Ex. A-2), FIR (Ex. A-3) and pleading of claimants and evidence given by the claimants himself and father of deceased Diwakar Bakshi claimant No. 1 and statement of the claimant and no contrary evidence adduced by the respondent/non-applicant. Therefore, the deceased Hemant Kumar Bakshi is pillion rider of said motorcycle and therefore, 10% consider contributory negligence in part of motorcycle driver and deducted from the claimant compensation is not tenable. Therefore, this case is not a case of contributory negligence and it is a case of composite negligence and claimant has a right but recover from respondents who is wrong doer, therefore, 10% deduction is set aside as considered by the learned Tribunal and its liability imposed upon 66% liability upon non-applicant Nos. 1, 2 & 3 and 34% liability upon non-applicant Nos. 4, 5 & 6 as awarded by the learned Tribunal.
- 9) As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs. 5,000/- per month from cloth Business 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. 4,500/- per month as per minimum wages at the relevant time. Further, considering the 38 years of 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 (supra), the claimants are held entitled for compensation in the following manner:-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs 4500/- per month.	(Rs. 4500 x12) = Rs. 54,000/- per annum
02.	40% of (1) above to be added towards future prospects.	(Rs. 54000 + 21600) = Rs. 75,600 /-
03.	1/4 deduction towards personal and living expenses of the deceased	(Rs. 75600 - 18900) = Rs. 56700/-
04.	Multiplier of 16 to be applied	(Rs. 56700 X16) = Rs. 9,07,200 /-
05.	Towards loss of estate, consortium and funeral expenses.	Rs. 70,000/-
06.	Towards filial consortium	Rs. 10,000/- (as awarded by Tribunal)
07.	Towards Parental consortium	Rs. 15,000/-
	Total compensation	Rs. 10,02,200/-

Since the Tribunal has already awarded Rs. 4,26,600/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 5,75,600/- with interest @ 6% per annum from the date of application till realization. Liability fastening upon non-applicant Nos. 1, 2 & 3 for 66% and liability fastening upon non-applicant Nos. 4, 5 & 6 for 34%. 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