

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 440 of 2013**

1. Smt. Shyamwati W/o Late Hiralal Gond Aged About 34 Years,
2. Shankar Lal S/o Late Hiralal Gond Aged About 15 Years,
3. Ku. Rajkumari D/o Late Hiralal Gond Aged About 13 Years,
4. Ku. Mamta D/o Late Hiralal Gond Aged About 11 Years,
5. Sukamat Gond S/o Late Hiralal Gond Aged About 6 Years,
Applicant No. 2 to 5 Minor, Through Mother (natural guardian)
appellant No. 1 Smt. Shyamwati.
6. Smt. Bihuliya Bai W/o Charan Singh Gond Aged About 54 Years,
7. Charan Singh Gond S/o Late Meyar Singh Gond Aged About 56
Years,

All are R/o Khongsara, Police Chowki- Belgahna, P.S. And Tahsil
Kota, Distt. Bilaspur (C.G.).

---- Appellants/Claimants

Versus

1. Tirath Prasad Kenwat S/o Jagat Ram Kenwat R/o Village-
Chalchalee, P.S. And Tah. Marwahi, Distt. Bilaspur (C.G.).
(Driver of the Tractor No. C.G. 10 D 4357)
2. Keshav Singh S/o Tivar Singh R/o Litiyasarai, Post- Gullidand,
P.S. Marwahi, District Bilaspur (C.G.). (Owner of the Tractor No.
C.G. 10 D 4357)
3. The Oriental Insurance. Co. Ltd. S/o Thru- Branch Manager,
Branch Office, Near Rajiv Plaza, Bus Stand, Bilaspur, P.S., Tah.
And District Bilaspur (C.G.) (Insurer of the Tractor No. C.G. 10 D
4357)

---- Respondents

For Appellants	:	Shri Anand Kesharwani, Advocate.
For Respondent No. 3	:	Shri Sandeep Shrivastava, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

01/05/2019

- 1) This appeal is by the claimant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 11/01/2013 passed by Fifth Additional Motor Accident Claims Tribunal Bilaspur (C.G.) in Claim Case No. 60/2012 awarding total compensation of Rs. 4,28,600/- with interest @ 7.5% per annum from the date of application till realization, fastening liability on the respondents/non-applicants No. 1 to 3 jointly and severally.
- 2) As per averments in the claim petition, deceased Hiralal Gond, aged about 35 years, earning between Rs. 5000 to Rs. 8000/- per month as Carpenter, by riding his motorcycle going to Marwahi when he reached near Madkot road on 30/12/2010 Non-applicant No. 1/Tirath Prasad Kenwat, who was driving the offending vehicle Tractor bearing No. CG10 D 4357 rashly and negligently dashed the deceased. Consequently, deceased Hiralal Gond suffered grievous injury and died on the spot. Offending vehicle was owned by non-applicant No.2/Keshav Singh and insured with non-applicant No. 3/The Oriental 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 submits as though he 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 monthly income of the deceased has wrongly been considered by the Tribunal as Rs.2600/-; whereas it should have

been between Rs. 7000/- to 8000/-

- ii. that multiplier of 17 has wrongly been applied and considering the age of the deceased, it should have been 18.
- iii. that 1/3rd deduction towards personal and living is also against the law and it should have been 1/5th.
- iv. that no amount towards future prospect has been granted to the claimants.
- v. 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/Insurance Company 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) As regards income of the deceased, though the claimants have pleaded that the deceased was earning between Rs. 5,000/- to Rs. 8,000/- per month as Carpenter 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. 3,000/- per month as per minimum wages at the relevant time. Further, considering the 35 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 3000/- per month.	(Rs. 3000 x12) = Rs. 36,000 per annum
02.	40% of (1) above to be added towards future prospects.	(Rs. 36000 + 14400) = Rs. 50,400/-
03.	1/5 deduction towards personal and living expenses of the deceased	(Rs. 50400 - Rs. 10080) = Rs. 40320/-
04.	Multiplier of 16 to be applied	(Rs. 40320 x16) = Rs. 6,45,120/-
05.	Towards loss of estate, consortium and funeral expenses.	Rs. 70,000/-
	Total compensation	Rs. 7,15,120/-

Since the Tribunal has already awarded Rs. 4,28,600/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 2,86,520/- with interest @ 7.5% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

-Sd/-
(Gautam Chourdiya)
Judge