

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1315 of 2018

1. Dameshwari Sahu Wd/o Tarun Kumar Sahu, aged about 25 years
2. Minor Kumari Versha D/o Late Tarun Kumar Sahu, aged about 06 years
3. Minor Kumari Gitanjali D/o Late Tarun Kumar Sahu, aged about 04 years
4. Minor Rounak Kumar S/o Late Tarun Kumar Sahu, aged about 02 year
Minor Appellant No.2 & 4 through legal guardian of mother Smt. Dameshwari Wd/o Tarun Kumar Sahu, At present address R/o Village Potiya, Police Station & District Gariyaband (C.G.)
5. Bimla Bai W/o Kumbhkaran Sahu, aged about 52 years
All are resident of Village : Singpur, Police Station : Magarlod, District Dhamtari (C.G.)

---- Appellants/Claimants

Versus

1. Sellam Mritthu S/o Karuppa Udiyar, aged about 43 years, Mobile No. 8903678743
2. Govind Rasu S/o Karuppa Udiyar, aged about 45 years, Mobile No. 9443825404
Both resident of village: House No. 6/173, Seliyampatti, Pudur, Tharku Kattu Kotai, Police Station: Mattikarai, Tahsil Atur, District Salem (Tamilnadu)
3. Branch Manager, Through : National Insurance Company Limited, Motin Mahal, G.E. Road Raipur, District Raipur (C.G.)

---- Respondents/Non-applicants

For Appellants	:	Shri S.P. Sahu, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Shivendu Pandya, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

11.02.2019

1. This appeal is by the Claimants/Appellants seeking enhancement of the compensation against the award dated 27.04.2018 passed by the Additional Motor Accident Claims Tribunal, Gariyaband (C.G.) in Claim Case No. 06 of 2017 awarding total compensation of Rs.11,41,000/- with simple interest @ 7% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.
2. As per claim petition, on 31.10.2016 deceased- Tarun Kumar Sahu aged

about 32 years, earning Rs.12,000/- per month by doing the work of driver and also doing the work of agriculture, died in the vehicular accident caused due to rash and negligent driving of the offending vehicle- Truck bearing registration No. TN-34/F/9274 by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3.

3. 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.

4. No counter appeal has been filed by the Respondents as submitted by the learned counsel for both the parties.

5. Learned counsel for the Claimants/Appellants submits that the accident occurred in the month of October, 2016, the deceased was doing the work of driver and the work of agriculture and was earning Rs.12,000/- per month. Even, as per minimum wages prevalent at that time his monthly income ought to have been taken at Rs.7,000/- but the Tribunal has considered the same as Rs.5,000/- per month which appears to be on the lower side. He further submits that the Tribunal has not awarded any amount towards loss of parental consortium and loss of filial consortium.

6. Learned counsel for Respondent No 3, however, opposes the appeal and submits that so far as argument in respect of loss of filial and parental consortium raised by the learned counsel for the Appellant is concerned, in view of the decision of the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, the learned Tribunal has already awarded amount under the conventional heads and has rightly awarded the amount of compensation, therefore, it is just and reasonable, which does not call for any interference in the instant appeal.

7. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of the Claims Tribunal.

8. As regards income of the deceased, though the Claimants have pleaded that the deceased was earning Rs.12,000/- per month by doing the work of driver and also doing the work of agriculture but no documentary evidence in support thereof has been adduced that the deceased was actually earning Rs.12,000/- per month at the time of accident. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.6,000/- per month as per minimum wages at the relevant time of skilled labour. Further, as per postmortem report (Ex.-P/9), considering the age of the deceased i.e. 28 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Pranay Sethi* (supra), ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, 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***, the Claimants/Appellants are held entitled for compensation in the following manner:-

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.6,000/- per month i.e. Rs.72,000/- per annum
2	40% towards future prospects added to income	(Rs.72,000/- + 28,800/-) Rs.1,00,800/-
3	$\frac{1}{4}$ deduction towards personal expenses of the deceased	(Rs.1,00,800/- – Rs.25,200/-) Rs.75,600/-
4	After multiplier of 17 applied	Rs.75,600/- x 17 = Rs.12,85,200/-
5	For conventional heads	Rs.70,000/- (as awarded by the Tribunal)
6	Towards loss of parental consortium @ Rs.15,000/- to Claimants No.2, 3 & 4 each	Rs.45,000/-
7	Towards loss of filial consortium to Claimant No. 4	Rs.15,000/-
	Total Compensation:	Rs.14,15,200/-

Since the Tribunal has already awarded Rs.11,41,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,74,200/-.

9. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimants/Appellants shall be entitled to a total enhanced amount of compensation of Rs.2,74,200/- with further direction of payment of simple interest on the enhanced amount of compensation @ 7% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge