

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 153 of 2016

1. Anil Lal Shrivastav S/o Ravindra Prasad, Aged about 37 years
2. Smt. Savita Devi W/o Anil Lal Shrivastav, Aged about 36 years
Both resident of Thanapara- Ratanpur, P.S. Ratanpur, Tahsil- Kota, District Bilaspur (C.G.)

---- Appellants/Claimants

Versus

1. Rambahadur Serpa S/o Aafu Aged about 56 years, R/o Udelabadi, P.S. Maalbazaar, District Jalpaigudi (Bengal), Present Address- Gatori, P.S. Koni, District Bilaspur (C.G.), (Driver of offending vehicle Truck bearing registration No. H.R.-26-6731)
2. R.P.G. Transmission Limited, Ifilite Tower, B-7th Floor, Sector 5 Phase 2, D.L.F. City, Gudagaon (Haryana)

Through Kanhucharan Panigrahi S/o Kishore Chandra Panigrahi, Asstt. Commercial Manager, Branch Office Employee Code No. V. 19561 Add. 6/474 First Floor, Home Guard Camp Road, In front of Irrigation Colony Kududand, P.S. Civil Line, District Bilaspur (C.G.)

(Owner of offending vehicle Truck bearing registration No. H.R.-26-6731)

3. Branch Manager, Through IFCO Tokyo General Assurance Company Limited First Floor Galaxy Hightus, Near I.C.I.C.I. Bank, Beside of Vyapar Vihar Sanjay Apartment, Tahsil and District Bilaspur (C.G.)
(Insurer of offending vehicle Truck bearing registration No. H.R.-26-6731)

---- Respondents

For Appellants	:	Shri A.L. Singroul, Advocate
For Respondents 1 to 2	:	None
For Respondent No.3/ Insurance Company	:	Shri K. Rohan, Advocate appears on behalf of Shri Amrito Das, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

21.01.2019

1. This appeal is by the Claimants/Appellant against the award dated 31.10.2015 passed by the Additional Motor Accident Claims Tribunal, Bilaspur (C.G.) in MACT No. 214 of 2015 awarding total compensation of Rs.6,00,240/- with interest @ 7.5% per annum from the date of application till realization, fastening the liability on the Insurance Company/Respondent No.3.

2. Claimants/Appellants are father and mother of deceased- Abhishek Shrivastav and Respondent No.1 is driver, Respondent No.2 is owner and Respondent No.3 is insurer of the offending vehicle.

3. As per claim petition, on 02.02.2015 deceased- Abhishek Shrivastav, aged 18 years, earning Rs.500/- per day as betel vendor, died in the motor vehicular accident caused due to rash and negligent driving of the offending vehicle Truck bearing registration No. HR-26/6731 by Respondent No.1.

4. On claim petition being filed by the Claimants/Appellants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

5. Learned counsel for the Appellants/Claimants submits as under:-

(i) that income of the deceased was wrongly been considered by the Tribunal as Rs.3,960/- per month whereas it should have been Rs.5,000/-;

(ii) that multiplier of 16 has wrongly been applied and considering the age of the deceased, it should have been 18;

(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 consortium has been granted.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matter 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.**

6. On the other hand, learned counsel for the Respondent No.3/Insurance Company, however, opposes the appeal and submits that as per *Pranay Sethi*

(supra), looking to the age of deceased i.e. 15 years considered by the Tribunal, 50% towards future prospect has wrongly been granted to the Claimants/Appellants and it should have been 40%.

7. I have heard the learned counsel appearing for the Claimants/Appellants as also the counsel appearing for the Insurance Company/Respondent No.3 and perused the impugned award including the records of the Claims Tribunal.

8. As regards income of the deceased, though the Claimants/Appellants have pleaded that the deceased was earning Rs.500/- per day as betel vendor 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.5,000/- per month as per minimum wages at the relevant time.

9. So far as argument relating to multiplier is concerned, considering the age of the deceased i.e. 15 years of age, the multiplier of 16 has wrongly been applied by the Tribunal, therefore, in view of the decision in the matter of *Smt. Sarla Verma* (supra), it can safely be taken as 18 in the instant matter.

10. So far as argument relating to future prospects of the deceased, grant of amount under the conventional heads being on the lower side and non-grant of filial consortium are concerned, considering the facts and circumstances of the case and the fact that the deceased was unmarried, he died at the age of 15 years leaving behind his mother and father aged about 36 and 37 respectively at the time of accident, keeping in view of the decisions of the Hon'ble Supreme Court in the matters of *Smt. Sarla Verma*; *Pranay Sethi and Magma* (supra), this Court re-compute the compensation in the following manner:-

Sl.No.	Heads	Calculation
1	Income of the deceased	Rs.5,000/- per month i.e. Rs.60,000/- per annum

2	40% towards future prospects added to annual income	(Rs.60,000/- + Rs.24,000/-) Rs.84,000/-
3	50% deduction towards personal expenses of the deceased	Rs.42,000/-
4	Multiplier of 18 applied	Rs.42,000/- x 18=Rs.7,56,000/-
5	For loss of estate and for funeral expenses (Rs.15,000/- + Rs.15,000/-)	Rs.30,000/-
6	Towards filial consortium @Rs.25,000/- to the Claimants (parents) each	Rs.50,000/-
	Total Compensation	Rs.8,36,000/-

Since the Tribunal has already awarded Rs.6,00,240/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,35,760/-.

11. 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.2,35,760/- with further direction of payment of interest on the enhanced amount of compensation @ 7.5% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

12. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge