

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 588 of 2015

1. Smt. Hemlata Thakur W/o Late Mansingh Thakur Aged About 28 Years, occupation housewife,
2. Ku. Neelam Thakur D/o Late Mansingh Thakur Aged About 10 Years
3. Ku. Janki Thakur D/o Late Mansingh Thakur Aged About 6 Years
4. Minor Omprakash Thakur D/o Late Mansingh Thakur Aged About 4 Years

Appellants No. 2 to 4 being minor on behalf of through their legal guardian mother Smt. Hemlata Thakur, appellant No.1.

5. Kriparam Thakur Aged About 65 Years, occupation unemployed
6. Smt. Binda Bai Thakur W/o Kriparam Thakur Aged About 60 Years, occupation unemployed

All R/o Village Bafra, Post Office Kasdol, Police Station And Tahsil Kasdol, District-Balodabazar, Chhattisgarh.

---- Appellants/claimants

Versus

1. Paramjeet Singh S/o Bahadur Singh Aged About 45 Years, occupation driver, service under Associate Automobile, R/o Light Industrial Area, Bhilai, Police Station And Post Office Bhilai, And District- Durg, Chhattisgarh
2. Associate Automobile, (Registered owner Trailer bearing registration No. CG/07/E/9477, R/o 248-250, Light Industrial Area, Bhilai, Police Station And Post Office-Bhilai, And Distrtict-Durg, Chhattisgarh
3. The New Insurance Company Limited, Through Branch Manager, Branch Office, Kutchery Chowk, Jail Road, Post Office- Raipur, Police Station-Gol Bazar, District- Raipur, Chhattisgarh (Insurer of vehicle Trailer bearing registration No. CG/07/E/9477)

---- Respondents

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

MAC No. 42 of 2015

- The New India Insurance (Correct Name is Assurance) Company Limited Kachheri Chowk, Jail Road, Raipur, Distt. Raipur C.G.

---- Appellant

Versus

1. Smt.Hemlata W/o Late Mansingh Thakur Aged About 28 Years, occupation housewife
2. Ku. Neelam D/o Mansingh Thakur Aged About 10 Years
3. Ku. Janki D/o Mansingh Thakur Aged About 6 Years

- ## ---- Respondents

Hon'ble Shri Gautam Chourdiya, J

29/03/2019

As both these appeals arise out of the award dated 15.10.2014 passed by Motor Accident Claims Tribunal, Mahasamund in Claim Case No.191/2013, they are being disposed of by this common judgment.

02. As per averments in the claim petition, on 23.7.2013 at around 2.30 pm Mansingh, 32 years of age, earning Rs.8000/- per month by working in Ambuja Cement Factory, was going on his motorcycle by riding the same with a moderate speed. However, on the way, non-applicant No.1 Paramjeet Singh by driving vehicle Trailer bearing No. CG 07 E 9477 in a rash and negligent manner, dashed the said motorcycle, as a result of which Mansingh suffered grievous injuries on head, chest and other parts of body and succumbed to the same.

03. On claim petition being filed by the claimants, widow, children and parents of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award, thereby granting Rs.16,26,600/- as compensation in favour of the claimants with interest @ 6% per annum from the date of claim

petition till realization and in default interest @ 9%, fastening liability on non-applicant No.3/insurance company, jointly and severally, along with non-applicants No. 1 & 2/driver & owner of the offending vehicle.

04. Being aggrieved by fastening of liability as also against the quantum of compensation, non-applicant No.3/insurance company has filed appeal MAC No.42/2015 whereas the claimants have filed appeal MAC No.588/2015 seeking enhancement of the compensation.

05. **MAC No.42/2015:** Learned counsel for the appellant/insurer submits that though he has also assailed the award of the Tribunal on the issue of liability but he is not pressing the same and is confining his arguments only to the quantum part. He submits that the deceased was said to be working as Supervisor in Ambuja Cement Factory but no documentary evidence has been adduced by the claimants in this regard. The income of the deceased @ Rs.4,500/- per month assessed by the Tribunal and the amount awarded under the conventional heads are very much on the higher side. He submits that in the present case, looking to the age of the deceased i.e. 35 years, in view of decision of the Hon'ble Supreme Court in **Smt. Sarla Verma and others VS. Delhi Transport Corporation and another**, the applicable multiplier would be 16 whereas the Tribunal has applied the multiplier of 17 and considering the dependency i.e. six, the deduction towards personal and living expenses of the deceased should have been 1/4th but the Tribunal deducted 1/5th. Likewise, 50% towards future prospect awarded by the Tribunal is also against the evidence on record and the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, because as per age of the deceased i.e. 35 years, the future prospect can be at the most 40% of the annual income. Lastly he submits that the penal interest @ 9% awarded by the Tribunal is also against the settled principle of law and is liable to be set aside.

06. On the other hand, learned counsel for the respondents/claimants submits that the compensation awarded by the Tribunal is on the lower side and therefore, the claimants have filed an appeal seeking enhancement of the same.

07. **MAC No.588/2015:** Learned counsel for the appellants/claimants submits that the deceased was working as Supervisor in Ambuja Cement Factor and earning Rs.8000/- per month but the Tribunal did not consider the same. He submits that the amount awarded under the conventional heads cannot be said to be excessive in view of decision of the Hon'ble Supreme Court in ***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.***

08. Heard learned counsel for the parties and perused the material available on record.

09. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.8000/- per month as Supervisor in Ambuja Cement Factory, 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.5,000/- per month as per minimum wages at the relevant time of skilled labour. Further, considering the age of the deceased i.e. 35 years, the dependency i.e. six, 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.5000/- per month.	60,000/- per annum
02.	40% of (i) above to be added towards future prospects.	60,000 + 24,000 = 84,000/-
03.	1/4th deduction towards personal and living expenses of the deceased	84,000 – 21,000 = 63,000/-
04.	Multiplier of 16 to be applied	10,08,000/-
05.	Towards loss of spousal consortium, loss of estate and funeral expenses.	70,000/-

08.	Towards loss of parental consortium to claimants No. 2 to 4 @ Rs.1 lac	3,00,000/- (as awarded by Tribunal)
09.	Towards loss of filial consortium to claimants No. 5 & 6 @ Rs.50,000/- each	1,00,000/- (as awarded by Tribunal)
	Total:	14,78,000/-

Since the Tribunal has awarded Rs.16,26,600/- whereas entitlement of the claimants comes to Rs.14,78,000/-, the insurance company is entitled to have refund of the amount paid in excess of its above liability.

10. In the result, the appeal MAC No.588/2015 filed by the claimants stands dismissed whereas the appeal MAC No.42/2015 filed by the insurance company is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact, except the condition of penal interest @ 9% per annum, which is hereby set aside.

Sd/

(Gautam Chourdiya)

Judge