

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 782 of 2015**

1. Smt. Monika Sen W/o Late Manoj Sen Aged About 23 Years,
2. Ku. Durga Sen D/o Late Manoj Sen Aged About 3 Years,
3. Ku. Deepti Sen D/o Late Manoj Sen Aged About 1 Years,
4. Smt. Binda Bai Sen W/o Late Shiv Kumar Sen Aged About 44 Years,
5. Ku. Manisha Sen D/o Late Shiv Kumar Sen Aged About 19 Years,

(Appellant No. 2 to 3 being minor on behalf of through their legal guardian mother Smt. Monika Sen Appellant No. 1)

All R/o Durgapara, Santoshi Nagar, Raipur, Post Office- Raipur, Police Station- Tikrapara, Raipur, District- Raipur (C.G.).

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

1. Bhuneshwar Nayak S/o Jagdish Nayak Aged About 24 Years R/o Village Khemda, Police Station And Post Office- Basna, District- Mahasamund (C.G.).  
[Driver of vehicle Bolero bearing registration No. CG/06/E/0518]
2. Ramdhan Sidar S/o Shri Garud Singh Sidar Aged About 50 Years R/o Village Arkel, Police Station & Post Office- Basna, District – Mahasamund (C.G.).  
[Registered owner of vehicle Bolero bearing registration No. CG/06/E/0518]
3. The Cholanandlam M.S. General Insurance Company Limited Through Branch Manager, Branch Office, 22, New Paras Nagar, Raipur, Post Office- Raipur, Police Station- Devendra Nagar, Tahsil & District- Raipur (C.G.).  
[Insurer of vehicle Bolero bearing registration No. CG/06/E/0518]

**---- Respondents**


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|----------------------|---|---------------------------------|
| For Appellants       | : | Shri Shivendu Pandya, Advocate. |
| For Respondent No. 3 | : | Shri S.S. Rajput, Advocate.     |

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**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**05/04/2019**

- 1) This appeal is preferred by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 17/12/2014 passed by 7<sup>th</sup> Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No. 232/2013 awarding total compensation of 5,87,300/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.
- 2) As per averments of claim petition, on 09/06/2013 at around 09:00 AM deceased Manoj Sen, aged about 25 years, earning Rs. 12,000/- per month as a Barber, was going towards village Basna from village Fingeshwar by his motorcycle bearing No. CG04-DB/9704 with a moderate speed. The motorcycle was being ridden by Manoj Sen and Chintaram was the pillion rider. However, on the way, near Village Bhimkhoj, Police Station Mahasamund non-applicant No.1-Bhuneshwar Nayak driving Bolero bearing No. CG06-E/0518 (offending vehicle) in a rash and negligent manner dashed the deceased. As a result of which Manoj Sen sustained grievous injury and died. At the time of accident the offending vehicle was owned by non-applicant No. 2/Ramdhan Sidar and insured with Non-applicant No. 3/The Choramandlam M.S. General Insurance Company Limited.
- 3) On claim petition being filed by the claimants/wife, children, mother and sister 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 award on the following grounds only :-

- i. that income of the deceased has wrongly been considered by the Tribunal as Rs. 3,000/- per month; whereas it should have been Rs. 12,000/- per month.
- ii. that 1/3rd deduction towards personal and living expenses of the deceased is also against the law and it should have been 1/4th pursuant to the large family (5 dependent members) left by the deceased.
- 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*** and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

- 5) On the other hand, learned counsel for the respondent/Insurance Company supports 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) As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs. 12,000/- per month as Barber & running Saloon Shop 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 can safely be taken as Rs. 5,000/- per month as per minimum wages at the relevant time. Considering the medical bills (Ex. P-7, 8 10 to 37, Ex. 41 to 66, Ex. 69 to 77)

Rs. 1,37,800/- by the Tribunal is just and proper. Further, considering the age of the deceased i.e 25 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma and Pranay Sethi* (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.                        | (Rs. 5000x12) = Rs. 60000 per annum |
| 02.     | 40 % of (i) above to be added towards future prospects.            | (Rs. 60000 + 24000) = Rs. 84,000/-  |
| 03.     | 1/4 deduction towards personal and living expenses of the deceased | (Rs. 84000 - 21000) = Rs. 63,000/-  |
| 04.     | Multiplier of 18 to be applied                                     | (Rs. 63,000 x 18) = Rs. 11,34,000/- |
| 05.     | Towards medical expenses (as awarded by Tribunal)                  | Rs. 1,37,800/-                      |
| 06.     | Towards loss of estate, loss of consortium and funeral expenses    | Rs. 70,000/-                        |
| 07.     | <b>Total compensation</b>                                          | <b>Rs. 13,41,800/-</b>              |

Since the Tribunal has already awarded Rs. 5,87,300/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 7,54,500/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

-Sd/-  
(Gautam Chourdiya)  
Judge