

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 531 of 2015**

1. Smt. Trivenibai, aged about 27 years, Wd./o late Tejram Nishad,
2. Chandni @ Chandrakala, aged about 12 years, D/o Late Tejram Nishad,
3. Santoshi, aged about 09 years, D/o Late Tejram Nishad,
4. Surekha, aged about 07 years D/o Late Tejram Nishad.
5. Prakash @ Vedprakash aged about 02 years son of Late Tejram Nishad
6. Kejuram Nishad S/o Late Pathari Ram Nishad, aged about 55 years. (Pathari Ram is correct Name. Impugned order wrongly typed)
7. Smt. Sukhabai W/o Shri Kejuram Nishad, aged about 52 years.

Appellant No. 2 to 5 are minors through their natural guardian Mother Smt. Triveni Bai aged about 27 years, Wd/o late Tejram Nishad, All are R/o. Village Sirsida, Tahsil- Kurud, District- Dhamatari (C.G.).

---Appellants/Claimants**Versus**

1. Chetan Mohanti S/o Shri Vidyadhar Mohanti, aged about 55 years, R/o Ramkrshnapur, Thana- Salhepur District- Katak (Odisha) (Driver of Truck No. OR-05-A.F./3231).
2. Jeet Singh S/o Shri Bagh Singh, R/o Haricheta- Choudwar, Thana- Tangi, Dist.- Katak (Odisha)(Owner of Truck NO. OR-05-A.F./3231).
3. The New India Insurance company Ltd. Through it's Manager, Circle Office-2: Jeevan Beema Marg, Business Complex, Pandri Raipur, Dist.- Raipur (C.G.) Tahsil & Dist. Dhamatari (C.G.) Insurer of Truck No. OR-05-A.F.?3231).

---- Respondents

For Appellants	:Shri R. S. Patel, Advocate
For Respondent No. 3	: Shri H. P. Agrawal, Advocate

MAC No. 529 of 2015

1. Smt. Lachhawantinbai, aged about 28 years, Wd/o. Late Devnarayan Dhruw,

2. Chunes S/o Late Devnarayan Dhruw, aged about 10 years,
3. Ku. Gopika @ Gopeshwari S/o Late Devnarayan Dhruw, aged about 08 years,
4. Ku. Ojeshavi D/o Late Devnarayan Dhruw, aged about 06 years.
5. Rajaram Dhruw S/o Shri Shivram Dhruw, aged about 55 years.

Appellant No. 2 to 4 are minors through their natural guardian mother Smt. Lachhawantinbai aged about 28 years Wd/o Village Sirsida, Tahsil- Kurud, District- Dhamatari (C.G.).

---- Appellants

Versus

1. Chetan Mohanti S/o Shri Vidyadhar Mohanti, aged about 55 years, R/o Ramkrshnapur, Thana- Salhepur District- Katak (Odisha),
(Driver of Truck NO. OR-05-A.F./3231)
2. Jeet Singh S/o Shri Bagh Singh, R/o Haricheta- Choudwar, Thana- Tangi, Dist.- Katak (Odisha)(Owner of Truck No. OR-05-A.F./3231)
3. The New India Insurance Company Ltd. Through its manager, Circle Office-2: Jeevan Beema Marg, Business Complex, Pandri Raipur, Dist.- Raipur (C.G.) Tahsil & Dist.- Dhamtari (C.G.) Insurer of Truck No. OR-05-A.F./3231).

---- Respondents

For Appellants	:Shri R. S. Patel, Advocate
For Respondent No. 3	: Shri H. P. Agrawal, Advocate

Honble Shri Justice Gautam Chourdiya

Judgment On Board

16/04/2019

1. As both these appeals i.e. MAC No. 531/2015 & MAC No. 529/2015 arise out of the two different awards dated 12.01.2015 passed by the Additional Motor Accident Claims Tribunal, Dhamtari, C.G. in claim cases No. 127/14 and 02/14, respectively, looking to the fact that both these claim cases pertains to the same accident involving the vehicle bearing No. OR05AF/3231 owned by non-applicant No. 2/Jeetram,

they are heard together and are being disposed of by this common judgment.

2. As per averments in the claim petition on 20.08.2013, at about 4.00pm while Tejram Nishad aged about 28 years with his friend Devnarayan Dhruv were returning from the house of the sister of Devnarayan on motorcycle, non-applicant no.1 Chetan Mohanti by driving Truck bearing no. OR05AF/3231, owned by non-applicant no.2 and insured with non-applicant no.3, in a rash and negligent manner dashed the said motorcycle, as a result of which Tejram Nishad and Devnarayan suffered grievous injuries and succumbed to the same.
3. On claim petition under Section 166 of the Motor Vehicle Act (which was registered as claim case no.127/2014) being filed by the wife, children & parents of deceased Tejram Nishad, 28 years of age and earning Rs.150 to 200/- per day as a Labour, the Tribunal considering the evidence led by the parties awarded total compensation of Rs.5,05,800/- with the interest @ 6 percent per annum from the date of award till realization. Likewise, on claim petition (which was registered as claim case no.02/2014) being filed by the wife, children & parents of deceased Devnarayan Dhruv, aged 30 years and earning Rs.150 to 200/- per day as a Labour, the Tribunal awarded a total sum of Rs.4,72,000/- with interest @ 6 percent per annum from the date of award till realization, the Tribunal fastened the liability on non-applicant no.3 jointly and severally along with non-applicant nos. 1 & 2 Driver and Owner of satisfying the said awards.
4. Learned counsel for the appellants/claimants submits that the Tribunal was not justified in assessing the income of both the deceased as Rs.36,000/- per annum whereas even if the minimum wages at the

relevant time is considered, their per month income can be taken as Rs.5,000/-. He also submits that the Tribunal has not awarded any amount towards future prospect and considering the age of both the deceased Tejram Nishad & Devnarayan Dhruv i.e. 28 & 30 years respectively, 40% should have been granted under this head. It is further submitted that the Tribunal has awarded a meager sum towards funeral expenses, loss of estate and pain and suffering. 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.***

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 matters has rightly awarded compensation which needs no interference by this Court.
6. Heard learned counsel for both the parties and perused the material available on record and the awards impugned.
7. Though, the claimants have pleaded that both the deceased were earning Rs.150 to 200/- per day as a Labour, however, no evidence in support thereof has been adduced by them. In these circumstances, their monthly income can safely taken as Rs.5,000/- per month as per minimum wages prevalent at the relevant time. Further, considering the age of both the deceased persons i.e. 28 & 30 years, the claimants in both cases are also entitled for 40% addition to their annual income towards future prospect. Thus, considering the age of both the

deceased, the dependency, the nature of their job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi* (supra), the claimants are held entitled for compensation in the following manner:

MAC No.531/2015 (Claim Case No.127/14)

S.I. No.	Heads	Calculation (in rupees)
1.	Income of the deceased @ Rs.5,000/- per month.	Rs.60,000/- per annum
2.	40% of (1) above to be added towards future prospects.	Rs.24,000/- Rs.60,000 + Rs.24,000 = Rs.84,000/-
3.	After 1/5th deduction towards personal and living expenses of the deceased	Rs.67,200/-
4.	Multiplier of 16 to be applied	Rs.1075,200/-
5.	Towards loss of estate funeral expenses and lose of consortium	Rs.70,000/-
6.	Total Compensation	Rs.11,45,200/-

Since the Tribunal has already awarded Rs.05,05,800/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.6,39,400/-. This additional amount of compensation as also the amount awarded by the Tribunal shall carry interest @ 6% per annum from the date of claim petition till realization. However, rest of the conditions of the impugned award shall remain intact.

MAC No. 529/2015 (Claim Case No.02/14)

S.I. No.	Heads	Calculation (in rupees)
1.	Income of the deceased @ Rs.5,000/- per month.	Rs.60,000/- per annum

2.	40% of (i) above to be added towards future prospects.	Rs.24,000/- Rs.60,000 + Rs.24,000 = Rs.84,000/-
3.	After 1/4th deduction towards personal and living expenses of the deceased	Rs.63,000/-
4.	Multiplier of 16 to be applied	Rs.10,08,000/-
5.	Towards loss of estate, funeral expenses and towards consortium	Rs.70,000/-
6.	Total Compensation	Rs.10,78,000/-

Since the Tribunal has already awarded Rs.4,72,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.6,06,000/-. This additional amount of compensation as also the amount awarded by the Tribunal shall carry interest @ 6% per annum from the date of claim petition till realization. However, rest of the conditions of the impugned award shall remain intact.

08. In the result, both the appeals are allowed in part with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge