

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 1553 of 2018**

1. Dogeshwari Meshram Wd/o Late Deepak Meshram Aged About 31 Years
2. Radhika Meshram W/o Sonaji Meshram Aged About 62 Years
3. Sonaji Meshram S/o Kushnarayan Meshram Aged About 72 Years
4. Mayank Meshram S/o Late Deepak Meshram Aged About 11 Years (Minor)

Appellant No.4 is minor, through their natural guardian Dogeshwari Meshram Wd/o Late Deepak Meshram, aged about 31 years, All the appellants are R/o Flat No.16, Green City, Ward No.35, Bhilai, Distt. Durg (CG)

**---- Appellants/claimants**

**Versus**

1. Vikray Singh Bada S/o Fransis Bada Aged About 32 Years R/o Kumdum, Dihari, Moapara, Police Station Gandhinagar, District Ambikapur Chhattisgarh. (Driver Of The Offending Vehilce Bus No. CG 04E 4050).
2. Anwar Ali S/o Ahmad Ali Through Royal Bus Services, R/o New Bus Stand Pandri, Raipur, District Raipur Chhattisgarh. (Owner Of The Offending Vehicle Bus No. CG 04 E 4050)
3. The Oriental Insurance Company Limited Through Divisional Manager, Divisional Office, Sai Nagar Road, Devendra Nagar, Raipur Chhattisgarh. (Insurer Of The Offending Vehicle Bus No. CG 04 E 4050)

**---- Respondents**

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|-------------------------|---|--------------------------------|
| For Appellants          | : | Ms. Rashul Bhawnani, Advocate. |
| For Respondent No.1 & 2 | : | None.                          |
| For Respondent No.3     | : | Mr. A.V. Deshmukh, Advocate.   |

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

**Judgment On Board**

**09/05/2019**

This appeal is by the claimants under Section 173 of the Motor

Vehicles Act, 1988 against the award dated 17.4.2018 passed by the II Additional Motor Accident Claims Tribunal to I Additional Motor Accident Claims Tribunal, Raipur (CG) in Claim Case No.672/2016 awarding total compensation of Rs.9.70 lacs with interest @ 7.5% per annum from the date of institution of the claim petition till realization, fastening liability on non-applicant No.3/insurance company.

02. As per claim petition, on 4.3.2015 Deepak Meshram, 40 years of age, earning Rs.15,000/- per month as an Accountant, by riding his motorcycle bearing No. CG 07 AQ 5021 with a moderate speed was going from Bhanpuri to Bilaspur. However, on the way, non-applicant No.1 Vikray Singh driving vehicle Royal Bus bearing No.CG 04 E 4050, owned by non-applicant No.2 & insured with non-applicant No.3, in a rash and negligent manner dashed the motorcycle of Deepak Meshram from backside as a result of which Deepak Meshram died on the spot.

03. On claim petition being filed by the claimants, wife, parents and minor son of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that she has also filed an application (IA No.2/2019) under Order 41 Rule 27 of CPC for taking on record the relevant account statement (Annexure A/2) showing income of the deceased.

05. Learned counsel for the respondent/insurance company opposes above application and submits that if such documents were available with the claimants at the time of recording of evidence before the Tribunal, the same should have been filed at that time. As per statement of AW-2 Prabhjot Singh Saini, Transporter, where the deceased is said to have been working as Accountant, no record/account book pertaining to salary of the employees working with AW-2 is maintained. Likewise AW-3 Bhaskar Mudliyar has also stated that though the deceased was working with him as Accountant but no record/account book pertaining to salary of the employees working with him is maintained. Therefore, the documents of Annexure A/2 sought to

be filed by the claimants do not appear to be genuine one and as such, the application is liable to be rejected.

06. Considering the facts and circumstances of the case, the fact that the claimants had ample opportunities before the Tribunal to file such documents but they failed to do so and particularly considering the evidence of AW-2 Prabhjot Singh Saini and AW-3 Bhaskar Mudliyar wherein they have categorically stated that they don't maintain any record/account books of salary of their employees, keeping in view the provisions of Order 41 Rule 27 of CPC, the application (IA No.02) is rejected.

07. As regards quantum of compensation, learned counsel for the appellants/claimants submits that the Tribunal has wrongly held the income of the deceased as Rs.6,000/- per month whereas in view of oral and documentary evidence on record adduced by the claimants, it should have been Rs.15,000/- p.m. Further, considering the number of dependents i.e. four on the deceased including father of the deceased who is 72 years old, the Tribunal should have deducted 1/4th instead of 1/3rd towards personal and living expenses of the deceased.

08. 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.

09. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

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

11. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.15000/- per month as an Accountant, but no documentary evidence to substantiate the same has been adduced by them. However, considering the evidence of AW-2 Prabhjot Singh Saini and AW-3 Bhaskar Mudliyar, the Transporters where the deceased is said to have been working as Accountant, who

have specifically stated that they used to pay Rs.10,000-5,000/- respectively to the deceased as an Accountant as per the salary certificates of Ex.P/21 and P/22 and the minimum wages at the relevant time of skilled labour, this Court is of the opinion that the monthly income of the deceased can safely be taken as Rs.8,000/- in place of Rs.6,000/- as has been considered by the Tribunal.

12. Further, considering the age of claimant No.3 Mayank Meshram, father of the deceased i.e. 72 years; the fact that no contrary evidence has been adduced by the non-applicants showing that claimant No.3 is being maintained by someone else or is having independent source of income or is dependent upon someone else, the Tribunal was not justified in not treating him as dependent on the deceased. Therefore, in this case, deduction towards personal and living expenses of the deceased would be 1/4th. Thus, considering the income of the deceased, his age i.e. 40 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in **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**, the claimants are held entitled for compensation in the following manner:

| Sl. No. | Heads                                                                       | Calculation (in rupees)           |
|---------|-----------------------------------------------------------------------------|-----------------------------------|
| 01.     | Income of the deceased @ Rs.8000/- per month.                               | 96,000/- per annum                |
| 02.     | 25% of (i) above to be added towards future prospects.                      | 96,000 + 24,000 = 1,20,000/-      |
| 03.     | 1/4th deduction towards personal and living expenses.                       | 1,20,000 – 30,000 = 90,000/-      |
| 04.     | Multiplier of 15 to be applied                                              | 13,50,000/-                       |
| 05.     | Towards loss of spousal consortium, loss of estate and for funeral expenses | 70,000/- (as awarded by Tribunal) |
|         | <b>Total</b>                                                                | <b>14,20,000/-</b>                |

Since the Tribunal has already awarded Rs.9.70 lacs after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4.50 lacs with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/

**(Gautam Chourdiya)**

**Judge**