

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 1661 of 2018**

1. Yogendra Shukla S/o Late Shri Shiv Kumar Shukla Aged About 48 Years
2. Smt. Smriti Shukla W/o Shri Yogendra Shukla Aged About 40 Years

Both Caste Brahmin, R/o Ward No. 07, Naya Chandaniya Para Janjgir, P.S. And Tahsil- Janjgir, Distict- Janjgir, Champa, Chhattisgarh

**---- Appellants/claimants**

**Versus**

1. Rakesh Kumar Dewangan S/o Baijnath Aged About 44 Years R/o Near Samleshwari Mandir, Dewangan Para Champa, P.S. And Tahsil- Champa, District- Janjgir-Champa, Chhattisgarh.,
2. Baijnath Dewangan S/o Lakhan Lal Dewangan Aged About 63 Years R/o Near Samleshwari Mandir, Dewangan Para Champa, P.S. And Tahsil-Champa, District- Janjgir-Champa, Chhattisgarh.,
3. Presiding Officer United India Insurance Company Ltd. 2nd Floor, Behind Balaji Petrol Pump, Station Road, T.P. Nagar, Korba, District- Korba, Chhattisgarh.....(Non Applicants),

**---- Respondents**

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|-------------------------|---|--------------------------------|
| For Appellants          | : | Shri HP Agrawal, Advocate.     |
| For Respondent No.1 & 2 | : | None.                          |
| For Respondent No.3     | : | Shri Sudhir Agrawal, Advocate. |

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

**Judgment On Board**

**15/04/2019**

This appeal is by the claimants, parents of the deceased, under Section 173 of the Motor Vehicles Act, 1988 against the award 6.8.2018 passed by the Motor Accident Claims Tribunal, Janjgir-Champa (CG) in Claim Case No. 02/2018 awarding total compensation of Rs.4.55 lacs with interest @ 8% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner.

02. As per claim petition, on 3.9.2017 while Utsav Shukla, aged 08 years, studying in Class-III, along with his mother (claimant No.2 Smriti Shukla) was going, near Akaltara Road, Gurukul School, non-applicant

No.1 Rakesh Kumar Dewangan, by driving vehicle Hundai Car bearing No. CG 11 BC 8300, owned by non-applicant No.2 and insured with non-applicant No.3, in a rash and negligent manner, dashed Utsav Shukla, as a result of which he suffered grievous injuries and died during treatment in Apollo Hospital, Bilaspur on 9.9.2017.

03. On claim petition being filed by the claimants, parents 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 the Tribunal has wrongly assessed the loss of dependency as Rs.2.25 lacs by taking the annual income of the deceased as Rs.30,000/- whereas in view of decision of the Hon'ble Supreme Court in ***Kishan Gopal and another Vs. Lala and others, (2014) 1 SCC 244***, the claimants are entitled for Rs.5 lacs under this head. He submits that the medical bills is also considered on the lower side and needs to be enhanced suitably.

05. 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. He submits that the deceased was neither a working person nor earning member of the family and therefore, the Tribunal was justified in assessing compensation by taking his notional income as Rs.30,000/- per annum. He submits that all the medical bills have also rightly been considered by the Tribunal and as such, there is no need to enhance the amount of compensation.

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

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

08. The Hon'ble Supreme Court in the matter of ***Kishan Gopal***

(supra), wherein a child aged about 10 years died in motor vehicular accident occurred on 19.7.1992 and the claimants were young parents, considering its various earlier decisions awarded Rs.5 lacs towards total loss of dependency and other conventional heads.

09. Thus, in view of the aforesaid decision, looking to the age of the parents and that of the deceased i.e. about 08 years and the fact that the accident occurred on 3.9.2017, this Court is of the opinion that the appellants/claimants are entitled for a total sum of Rs.4.50 lacs towards loss of dependency. This apart, in view of decision of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the claimants are also entitled for Rs.15,000/- towards loss of estate and Rs.15,000/- for funeral expenses. Further, keeping in view the 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***, the claimants are also entitled for Rs.40,000/- each i.e. Rs.80,000/- towards loss of filial consortium. So far as the amount awarded towards medical expenses, conveyance and attendant of Rs.1.50 lacs is concerned, the same being based on proper appreciation of the oral and documentary evidence adduced and proved by the claimants, deserves to be kept intact. Thus, the claimants are held entitled for a total sum of Rs.7.10 lacs (4,50,000/- + 15,000/- + 15,000/- + 40,000/- + 40,000/- + 1,50,000/-).

Since the Tribunal has already awarded Rs.4.55 lacs, after deducting the same, the claimants are held entitled for additional compensation of Rs.2.55 lacs with interest @ 8% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

**Sd/  
(Gautam Chourdiya)  
Judge**