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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1745 of 2018

1. Smt. Indrani Bai W/o Late Dhvajram Sahu, aged about 33 years
2. Khubiram S/o Late Dhvajram Sahu, aged about 16 years
3. Ku. Damini D/o Late Dhvajram Sahu, aged about 14 years
4. Nitish Kumar S/o Late Dhvajram Sahu, aged about 11 years
5. Ku. Kamini D/o Late Dhvajram Sahu, aged about 08 years
6. Rikhiram Sahu S/o Late Amoli Sahu, aged about 78 years
7. Bisahin Sahu W/o Rikhiram Sahu, aged about 73 years

Appellants No. 2 to 5 is minor through legal Guardian Mother Smt. Indrani Bai Appellant No.1 All R/o- Village Atargawa Ward No. 12 Thana & Tahsil Nawagarh, District Bemetara (Chhattisgarh)

---- Appellants/Claimants

Versus

1. Ravindra Kumar Verma S/o Rupnarayan Verma, aged about 40 years, R/o Bansakara Thana- Simga, District Balouda Bazar (C.G.) (Owner-cum-Driver of the offending vehicle Car No. C.G.04/L.B./9993)

Non-applicant No.1

2. Branch Manager, The Iffilco Tokiyo General Insurance Company Limited, Branch Office-Gallery Heights 1st Floor, Near I.C.I.C.I. Bank Behind of Sanjay Apartment, Byapar Vihar Road Bilaspur, Thana Civil Line Bilaspur, Tahsil and District Bilaspur (C.G.) (Insurer of the offending vehicle Car No. C.G.04/L.B./9993)

Non-applicant No.2

---- Respondents/Non-applicants

For Appellants	:	Shri A.L. Singroul, Advocate
For Respondent 1	:	None
For Respondent No.2	:	Shri P.R. Patankar, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

28.02.2019

1. This appeal is by the Appellants/Claimants against the award dated 02.05.2018 passed by the First Upper Motor Accident Claims Tribunal, Bilaspur (C.G.) in Claim Case No. 569 of 2017 awarding total compensation of Rs.16,68,685/- with interest @ 6% per annum from the date of application till

realization, fastening liability on the Respondent No.2/non-applicant No.2.

2. The Appellants/Claimants are wife, minor children, father and mother of deceased-Dhvajram Sahu. According to the Claimants, on 29.07.2017 deceased-Dhvajram Sahu 37 years, earning Rs.15,000/- per month as driver, died in the motor vehicular accident caused due to rash and negligent driving of the offending vehicle- Swift Car bearing registration No. CG-04/LB/9993 by non-applicant No.1/driver-cum-owner and insured with non-applicant No.2.

3. On claim petition being filed by the Claimants under Section 166 of the Motor Vehicles Act, 1988, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

4. No counter appeal has been filed by the Respondents as submitted by both the parties.

5. Learned counsel for the Appellants/Claimants submits that the deceased was working as driver and he was a skilled labour, driving the Tractor of AW-2-Rijhawan Sahu but the Tribunal has wrongly considered the monthly income of the deceased on the basis of unskilled labour at Rs.7,930/- whereas it should have been Rs.15,000/- per month as skilled labour.

6. On the other hand, learned counsel for the Respondent No.2/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.

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

8. As regards income of the deceased, the Claimants have pleaded that the deceased was earning Rs.15,000/- per month as driver 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.9,000/- per month as per minimum wages at the relevant time of skilled labour. Further, considering the age of the deceased i.e. 37 years, the

dependency i.e. seven, the nature of his job and 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**, the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased	Rs.9,000 per month i.e. Rs.1,08,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.1,08,000/- + Rs.43,200/-) Rs.1,51,200/-
3.	1/5th deduction towards personal and living expenses of Deceased	(Rs.1,51,200/- – Rs.30,240/-) Rs.1,20,960/-
4.	Multiplier of 15 applied	Rs.1,20,960/- x 15 = Rs.18,14,400/-
5.	Under Conventional heads: Loss of consortium, loss of estate & funeral expenses	Rs.70,000/-
	Total Compensation	Rs.18,84,400/-

9. Since the Tribunal has already awarded Rs.16,68,685/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,15,715/- with interest @ 6% 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 in part with modification in the impugned award to the above extent.
11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge