

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1739 of 2018**

1. Smt. Lalita Bai wife of Late Jivrakhan Sahu, aged about 44 years,
2. Udit Narayan Sahu, son of late Jivrakhan Sahu, aged about 26 years,
3. Bhakt Prahlad Sahu, son of late Jivrakhan Sahu, aged about 22 years,
4. Indrajeet Sahu son of late Jivrakhan Sahu, aged about 22 years,
5. Gayatri Sahu D/o. Late Jivrakhan Sahu, aged about 27 years,

All are R/o Indira Colony, Kasdol, P.S. and Tahsil Kasdol, District-Balodabazar- Bhatapara (C.G.),

---- Appellants/Claimants

Versus

1. Raju Ram son of Birbali, aged about 32 years, R/o. Village Puraina, Bhailai-3, P.S. Bhilai-3, District-Durg (C.G.) (Driver of vehicle D.I. Pick-up No. CG-04, J.D.-1275),
2. Arun Kumar son of Girdhar Lal Rathore, aged about 42 years, R/o. New Gayatri Nagar, Raipur (C.G.) (Owner of vehicle D.I. Pick-up No. CG-04, J.D.-1275),
3. The New India Insurance Company Limited, Divisional Office at Jeevan Bima Marg Vyavsayik Parisar, Pandari, Raipur, District-Raipur (C.G.) (Insurer of vehicle D.I. Pick-up No. CG-04, J.D.-1275),

---- Respondents

For Appellants	:	Shri Praveen Dhurandhar, Advocate.
For Respondent No.3	:	Shri B. N. Nande, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

15.01. 2019

This appeal is by the claimants under Section 173 of the Motor Vehicle Act, against the award dated 07.07.2018, passed by Motor Accident Claims Tribunal, Baloda Bazar (C.G.) in Claim Case No.66/2017 awarding total compensation of 7,97,536/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicant No. 3.

02. As per claim petition, on 10.06.2017, deceased Jevrakhan Sahu, aged about 47 years, earning Rs.1,000/- per day as scrap dealer, died in the motor vehicular accident caused due to rash and negligent driving of vehicle (Pick-up) bearing registration No. CG04-JD/1275 by non-applicant No.1- Rajuram. The offending vehicle was owned by non-applicant No. 2 and insured with non-applicant No 3.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned in para 1 of this judgment.

04. Learned counsel for the appellants/claimants submits that the deceased was working as scrap dealer and earning Rs. 1,000/- per day and entire family of the deceased were dependent upon him but the learned Tribunal has wrongly been considered the income of the deceased as Rs.5,625/- by ignoring the dependency of the family members upon the deceased and the minimum wages at the relevant time. He further submits that the amount awarded under the conventional heads is also being on the lower side which deserves to be enhanced suitably. He further submits that amount awarded by the Tribunal towards love & affection is also on the lower side which may 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, National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680, 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.

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. Learned counsel for the Insurance Company further submits that there is no any established income was proved by the claimant therefore, future prospect can not be considered.

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

07. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.1,000/- per day as scrap dealer but no documentary or oral 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.7,000/- per month as per minimum wages at the relevant time. So far as the amount awarded by the Tribunal toward love & affection to the appellant Nos. 2, 3, 4 & 5 would be considered as parental head in the light of Apex Court Judgment in the Matter of ***Magma General Insurance Co. Ltd. (supra)***. Further, considering the age of the deceased, the dependency, the nature of his 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:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.7,000/- per month.	Rs. 7,000x12= Rs. 84,000/- per annum
02.	25% of (1) above to be added towards future prospects.	Rs. 84,000+ 21,000= Rs. 1,05,000/-
03.	1/4th deduction towards personal and	Rs. 1,05,000-

	living expenses of the deceased	26,250=Rs. 78750/-
04.	Multiplier of 13 to be applied	Rs.78,750x 13= Rs.10,23,750/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06.	Towards Parental consortium	Rs. 15,000/-each (to appellant Nos. 2,3, 4 & 5) =Rs. 60,000/-
07.	Total compensation	Rs. 11,53,750/-

Since the Tribunal has already awarded Rs.7,97,536/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 3,56,214/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

Sd/-

(Gautam Chourdiya)

Judge