

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Miscellaneous Appeal (Civil) No. 1741 of 2018**

1. Smt. Padmani wife of late Mansuram Markam, aged about 35 years
2. Smt. Sukhiyarin wife of Bisal @ Bisu Markam, aged about 60 years
3. Praveen Kumar son of late Mansuram Markam, aged about 10 years
4. Ravindra Kumar son of late Mansuram Markam, aged about 8 years
5. Kumari Priyanka D/o Late Mansuram Markam, aged about 06 years
6. Preetam son of late Mansuram Markam, aged about one month (wrongly mentioned as serial no.5 in the instant appeal)

No.3 to 6 are minor through: their legal guardian mother Smt. Padmani-Appellant No.1

All are R/o Village Deeppara Aanwari, Tahsil Keshkal, District Kondagaon (C.G.)

**---- Appellants/Claimants**

**Versus**

1. Bhagwat Pandey son of Jagannath Jaiswal, aged about 25 years, R/o Village Tendubhata, Arandi, P.S. Keshkal, District Kondagaon (C.G.) - *Driver*
2. Jagannath Jaiswal son of Siyaram Jaiswal, R/o Village Tendubhata, Arandi, P.S. Keshkal, District Kondagaon (C.G.) - *Owner*
3. Branch Manager, National Insurance Company Limited, Near Central Bank, R.M.S. Office, Jagdalpur, District Bastar (C.G.) - *Insurer*

**---- Respondents/Non-applicants**

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|                       |   |                                     |
|-----------------------|---|-------------------------------------|
| For Appellants        | : | Shri Praveen Dhurandhar, Advocate   |
| For Respondents 1 & 2 | : | None                                |
| For Respondent No.3   | : | Shri Sanjay Kumar Agrawal, Advocate |

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

**Judgment on Board**

**15.01.2019**

1. This appeal is by the Claimants/Appellants against the award dated 02.01.2018 passed by the Motor Accident Claims Tribunal, Kondagaon, District Kondagaon (C.G.) in Claim Case No. 47 of 2017 awarding total compensation of Rs.8,59,750/- with interest @ 9% per annum from the date of application till

realization, fastening the liability on the Respondents jointly or severally.

2. Claimants/Appellants are wife, mother, minor sons and daughter of deceased- Mansuram.

3. Respondent No. 1 is driver, Respondent No.2 is owner and Respondent No. 3 is insurer of the offending vehicle Tata bearing registration No. CG-04/G/4428.

4. As per claim petition, on 05.04.2017 deceased- Mansuram, aged about 35 years earning Rs.300/- per day which comes to Rs.9,000 per month by doing as labour, died in the motor vehicular accident caused due to rash and negligent driving of the vehicle Tata bearing registration No. CG-04/G/4428. by Respondent No.1- Bhagwat Pandey.

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

6. Learned counsel for the Claimants/Appellants submits as under:-

- (i) that the income of the deceased has wrongly been considered by the Tribunal as Rs.4,500/- per month whereas it should have been Rs.9,000/-;
- (ii) that looking to the age of deceased i.e. 35 years, the Tribunal has considered 30% towards future prospects, it should have been 40%;
- (iii) that multiplier of 15 has wrongly been applied and considering the age of the deceased, it should have been 16; and
- (iv) that no amount towards loss of filial and other consortium has been granted.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matter 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** and **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.**

7. On the other hand, learned counsel for Respondent No.3/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.
8. Heard learned counsel for the parties and perused the material available on record.
9. As regards income of the deceased, though the Claimants have pleaded that the deceased was earning Rs.9,000/- per month as labour 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. Further, considering the age of the deceased, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma, Pranay Sethi and Magma General Insurance Co. Ltd.* (supra), the Claimants/Appellants are held entitled for compensation in the following manner:-

| Sl.No. | Heads                                                                          | Calculation                                        |
|--------|--------------------------------------------------------------------------------|----------------------------------------------------|
| 1      | Income of the deceased                                                         | Rs.7,000/- per month i.e.<br>Rs.84,000/- per annum |
| 2      | 40% towards future prospects added to annual income                            | (Rs.84,000/- + Rs.33,600/-)<br>Rs.1,17,600/-       |
| 3      | 1/4th deduction towards personal expenses of the deceased                      | (Rs.1,17,600/- – Rs.29,400/-)<br>Rs.88,200/-       |
| 4      | Multiplier of 16 applied                                                       | Rs.88,200/- x 16=Rs.14,11,200/-                    |
| 5      | For loss of consortium, loss of estate and for funeral expenses (Rs.40,000/- + | Rs.70,000/-                                        |

|   |                                                                                |                       |
|---|--------------------------------------------------------------------------------|-----------------------|
|   | Rs.15,000/- + Rs.15,000/-)                                                     |                       |
| 6 | Towards filial consortium to Claimant No.2                                     | Rs.10,000/-           |
| 7 | Towards loss of parental consortium @ Rs.10,000/- to Claimants No. 3 to 6 each | Rs.40,000/-           |
|   | <b>Total Compensation</b>                                                      | <b>Rs.15,31,200/-</b> |

Since the Tribunal has already awarded Rs.8,59,750/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.6,71,450/-.

**10.** Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimants/Appellants shall be entitled to a total enhanced amount of compensation of Rs.6,71,450/- with further direction of payment of interest on the enhanced amount of compensation @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

**11.** No order as to costs.

Sd/-  
**(Gautam Chourdiya)**  
Judge