

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1810 of 2018**

1. Smt. Laxmi Nishad W/o. Late Munshiram Nishad aged about 32 years,
2. Kumari Kiran Nishad, D/o. Late Munshiram Nishad aged about 15 years,
3. Kumari Madhu Nishad, D/o. Late Munshiram Nishad, aged about 13 years,
4. Tekram Nishad, S/o. Late Munshiram Nishad, aged about 12 years,
5. Kumari Payal Nishad, D/o Late Munshiram Nishad, aged about 08 years,
6. Mahesh Nishad, S/o. Late Munshiram Nishad, aged about 06 years,

All above appellants No. 2 to 6 are being represented through their natural guardian i.e. the mother namely Smt. Laxmi Nishad, W/o. Late Munshiram Nishad, aged about 32 years,

All above appellants are R/o Sanjay Nagar, Near Kanhaiya Hotel, behind the pond, Supela, P.S. Supela, District- Durg (C.G.).

---- Appellants/Claimants**Versus**

1. Khumesh Kumar Kahar, S/o. Udhoram Kahar, aged about 20 years, R/o L14, H. No. C/5, Reshne Awas, Supela, Tehsil and District- Durg (C.G.).

(Driver of the offending truck bearing No. CG07/BC6984)

2. Sanjay Agrawal, S/o. Shri Inderchand Agrawal, aged about 37 years, R/o H.No. 49/04, Nehru Nagar, Near Buniyad Complex, P.S. Supela, District- Durg (C.G.)

(Owner of the offending truck bearing No. C.G.07/BC6984)

3. General Insurance Company Limited through its Branch Manager, Bajaj Alliance, Above Maharashtra Bank, Supela Chowk, behind Police Traffic tower, Akash Ganga P.S. Supela, Bhilai, District- Durg (C.G.).

---- Respondents

For Appellants	: Ms. Aditi Singhvi, Advocate.
For Respondent No.3	: Shri Abhishek Sinha, Advocate, alongwith Shri Amit Buxy, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****18.01.2019**

This appeal is by the claimants against the award dated 08.08.2018, passed by 2nd Additional Motor Accident Claims Tribunal, Durg in Claim Case No.63/2018 awarding total compensation of Rs. 8,26,000/- with interest @ 7% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

02. As per claim petition, on 11.10.2016 at about 23.15 o'clock deceased Munshiram Nishad, aged about 35 years, earning Rs.30,000/- per month as Auto driver and Hammal died in the motor vehicular accident caused due to rash and negligent driving of vehicle (Maruti Van) bearing registration No. CG07BC/6984 by non-applicant No.1. The vehicle is driven by Non-applicant No. 1- Khumesh Kumar Kahar, owned by Non-applicant No. 2-Sanjay Agrawal and insured with Non-applicant No. 3- Bajaj alliance General Insurance Company Ltd.

03. On claim petition being filed by the claimants/wife & children under Section 166 & 140 of the Motor Vehicles Act, 1988 the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that the deceased was working as Auto driver and Hummal at the time of accident but the income of the deceased has wrongly been considered by the Tribunal as Rs.4500/- whereas it should have been Rs.7000/- looking to the minimum wages prevailing at the time of accident. He

also submits that no amount towards loss of parental consortium has been granted to the claimants/children of the deceased.

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 opposes the contention made by learned counsel for the appellants/claimants and submits that looking to the number of family members who were dependent upon the deceased the learned Tribunal wrongly considered the deduction of 1/5th towards the personal and living expenses whereas it should have been 1/4th and it is prayed that considering the aforesaid fact the compensation should be suitably reduced.

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.7,000/- per month as Auto driver and Hammal 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.6,000/- per month as per minimum wages at the relevant time. It is also apparent from the impugned award that the deduction of 1/5th towards the personal and living expense is wrongly considered whereas it would be applicable 1/4th in place of 1/5th. Further, considering the age of the deceased i.e. 41 years (as per Aadhar Card of deceased), the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi, Magma General Insurance Co. Ltd.* (supra), the claimants are

held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs. 6,000/- per month.	Rs. 6,000x12= Rs. 72,000/- per annum
02.	25% of (1) above to be added towards future prospects.	Rs. 72,000+18,000= Rs. 90,000/-
03.	After 1/4 th deduction towards personal and living expenses of the deceased	Rs. 67,500/-
04.	Multiplier of 14 to be applied	Rs. 9,45,000/
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
06	Towards parental consortium (respondent Nos. 2 to 6)	Rs. 15,000/-each= Rs. 75,000/-
07	Total compensation	Rs. 10,90,000/-

Since the Tribunal has already awarded Rs.8,26,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,64,000/- with interest @ 7% 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