

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1885 of 2018

1. Smt. Sapura Bai wife of late Rain Singh Kange, aged about 38 years
2. Sandeep Kange, son of late Rain Singh Kange, aged about 24 years
3. Kumari Kiran Kange, D/o late Rain Singh Kange, aged about 18 years
4. Minor Ku. Bharti Kange, D/o late Rain Singh Kange, aged about 14 years, Minor through legal guardian mother Smt. Sapura Bai

All are R/o Village Kirgapati, Post Pidapal Gram Panchayat, Mandari, Tahsil and District North Bastar Kanker (C.G.)

---- Appellants/Claimants

Versus

1. Bhojraj Jain, son of Pardeshi Ram Jain, R/o Village Kokpur, Kanker, District North Bastar Kanker (C.G.) - **Driver**
2. Prabhu Ram Jain son of Kisun Ram Jain, aged about 38 years, R/o Village Kokpur, Kanker, District North Bastar Kanker (C.G.) - **Owner**
3. National Insurance Company Limited, Through : Branch Manager, Near Central Bank, R.M.S. Office, Jagdalpur, District Bastar (C.G.) - **Insurer**

---- Respondents/Non-applicants

For Appellants	:	Shri Pramod Ramteke, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

30.01.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by Motor Accident Claims Tribunal, North Bastar, Kanker (C.G.) vide award dated 02.08.2018 passed in Claim Case No. 07 of 2018.
2. The Claimants/Appellants, unfortunate wife and children of deceased- Rain Singh, claimed compensation of Rs.26,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the death of deceased- Rain Singh in the motor accident.
3. Facts of the case, in brief, are that on the date of accident i.e. 20.09.2017 when deceased- Rain Singh was going to attend rally at Kanker in the motorcycle

of Narsingh Gawde as a pillion rider, Respondent No.1/driver of the offending vehicle Tractor & Trolley bearing registrations No. CG-05/C/6132 & CG-05/C/6133 driving the said vehicle in a rash and negligent manner dashed the motorcycle. Due to the said accident Rain Singh sustained grievous injuries and later on died.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.8,29,375/- to the Claimants with interest @ 7.5% per annum from the date of filing of the application till realization and liability fastened upon the Respondents to pay compensation jointly and severally.

5. Learned counsel for the Claimants/Appellants submits that the accident occurred in the month of September, 2017, the deceased was doing the work of mason and was earning Rs.9,000/- per month. Even, as per minimum wages prevalent at that time his monthly income ought to have been taken as Rs.7,000/- – Rs.8,000/- but the Tribunal has considered the same as Rs.4,500/- per month which appears to be on the lower side. He further submits that the Tribunal assessed the future prospects as 25% and it should have been 40%, multiplier of 15 has wrongly been applied and the amount awarded under the conventional heads is also on the lower side. He further submits that the learned Tribunal has not considered the amount towards parental consortium, therefore, in view of 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** 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**, this Court may consider the same and enhance the compensation accordingly.

6. On the other hand, learned counsel for the Insurance Company/Respondent No.3 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.

7. Heard learned counsel for the parties and perused the material available on record.
8. As regards income of the deceased, though the Claimants have pleaded that the deceased was earning Rs.9,000/- per month as Mason 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.	Head	Calculation
1	Income of the deceased	Rs.7,000/- per month i.e. Rs.84,000/-
2	25% toward future prospects added to the annual income	(Rs.84,000/- + Rs.21,000/-) Rs.1,05,000/-
3	1/4th deduction towards personal expenses of deceased	Rs.1,05,000/- – Rs.26,250) Rs.78,750/-
4	Multiplier of 15 applied	Rs.78,750/- x 15 = Rs.11,81,250/-
5	Towards loss of estate, loss of spousal consortium and funeral expenses	Rs.70,000/- (as awarded by the Tribunal)
6	Towards loss of parental consortium @ Rs.10,000/- to Claimants No. 2, 3 & 4 each	Rs.30,000/-
	Total Compensation	Rs.12,81,250/-

Since the Tribunal has already awarded Rs.8,29,375/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.4,51,875/-.

9. 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.4,51,875/- with further direction of payment of interest on the enhanced amount of compensation with interest @ 7.5% per annum from the date of filing of the application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge