

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No.768 of 2015****Reserved on 24.09.2020****Pronounced on 29.09.2020**

1. Smt. Buddhmati Patel, W/o Late Bodhram Patel, Aged About 52 Years, R/o B/42, Rama Green City, Khamtarai Road, P.S. Sarkanda, District Bilaspur, Chhattisgarh (Applicant/Claimant).
2. Amrat Lal Patel, S/o Late Bodhram Patel, Aged About 30 Years, R/o B/42, Rama Green City, Khamtarai Road, P.S. Sarkanda, District Bilaspur, Chhattisgarh (Applicant/Claimant).

---- Appellants**Versus**

1. Parsuram Rajpoot, S/o Shri Nathuni Singh Rajpoot, Aged About 45 Years, R/o in the House of Rajbahadur, near Urdna Barrier, O.P. Jutmil, Tehsil & District Raigarh, Chhattisgarh. Through owner of Vehicle, Devendra Soni, S/o Late Gurucharan Soni, Aged about 55 years, R/o Jail Road (Jail Para), O.P. Jutmil, Tehsil & District Raigarh, Chhattisgarh (Non-Applicant No.1/Driver of Trailer bearing Registration No.CG-13-D/6282).
2. Devendra Soni, S/o Late Gurucharan Soni, Aged About 55 Years, R/o Jail Road (Jail Para), O.P. Jutmil, Tehsil & District Raigarh, Chhattisgarh (Non-Applicant No.2/Owner of Trailer bearing Registration No.CG-13-D/6282).
3. Reliance General Insurance Company Limited, Through Branch Manager, Shop No.412-413 Ravi Bhvan, near Jaystambh Chowk

(Jasstambh) Chouk, Raipur, Chhattisgarh (Non-Applicant No.3).

---- Respondents

For Appellants	: Mr. Rajesh Jain, Advocate.
For Respondent Nos.1 & 2	: None, as notice dispensed with.
For Respondent No.3	: Mr. Nilesh Kumar Thakur, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal, J

CAV Award/Order

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') questioning the legality and propriety of the award dated 05.03.2015 passed by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal'), Bilaspur (C.G.) in Claim Case No.41/2013, whereby, the Tribunal while allowing the claim in part has awarded the total amount of compensation to the tune of Rs.2,51,000/- with 6% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.
2. Briefly stated the facts of the case are that on 16.06.2013, the deceased Bodhram Patel was returning to his Village Bodadarha from the Village Kharsia by his cycle and at the relevant time he was dashed vehemently from his opposite side by the offending vehicle '*Haiwa-Trailer*' bearing Registration No.CG-13-D-6282, which was being driven in a rash and negligent manner by its driver

namely, Parsuram Rajpoot/Non-Applicant No.1, which was owned by Non-Applicant No.2/Devendra Soni and was insured with Non-Applicant No.3/Reliance General Insurance Company Limited. Owing to the alleged accident, the deceased was injured badly and succumbed to the injuries during the course of his treatment.

3. On account of the aforesaid accident, the legal representatives of the deceased Bodhram Patel, who are widow and a son of him, instituted a claim petition enumerated under Section 166 of the Act of 1988 by submitting *inter alia* that the deceased, 55 years old, was running a dairy farm and used to earn Rs.15,000/- per month, and, thus, total amount of compensation to the tune of Rs.33,90,000/- has been claimed under various heads.
4. The Non-Applicant No.1/Parsuram Rajpoot (Driver of the vehicle in question) proceeded *ex parte*, while Non-Applicant No.2/Owner of the vehicle in question contested the claim on the ground that since the vehicle in question was insured with the Reliance General Insurance Company Limited/Non-Applicant No.3, therefore, in case of any liability being fastened, the same could be indemnified by the said company. While, the Insurer has contested the claim mainly on the ground that the vehicle in question was being used in violation of the insurance policy, as it was being used without any permit and that too by a driver, who was even not holding the effective and valid driving license, therefore, no liability could be fastened upon it.
5. After considering the evidence led by the parties, the Tribunal arrived at a conclusion that the alleged accident occurred on 16.06.2013 due to the rash and negligent driving by the driver of

the alleged offending vehicle namely, Parsuram Rajpoot, resulting into the sad demise of Bodhram Patel, who was found to be 60 years old at the relevant time. It held further that the vehicle in question was not being used in violation of the insurance policy and, Applicant No.2/Amrat Lal Patel being a major son cannot be held to be dependant upon the deceased (father) and that by considering the monthly income of the deceased to the tune of Rs.4,500/- awarded a total amount of compensation as mentioned hereinabove.

6. Mr. Rajesh Jain, learned counsel appearing for the Claimants/Appellants, submits that while determining the amount of compensation, the Tribunal has committed an illegality in holding that the Applicant No.2 Amrat Lal Patel (son) was not dependant upon his father, the deceased and that by assessing the income of the deceased only to the extent of Rs.4,500/- per month, erred in awarding a meagre amount of compensation even without considering the future prospects of his income and by applying improper multiplier of 8. According to him, the deceased was running a dairy farm, and therefore, his income ought to have been taken into consideration as a skilled wager, as provided under the Minimum Wages Act, 1948. Having failed to do so, the Tribunal has committed an illegality in not awarding the just and fair compensation payable to the Claimants. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matters of **National Insurance Company Limited Versus Pranay Sethi and Others**, and **Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram and Others**, reported

in **(2017) 16 SCC 680** and **(2018) 18 SCC 130**, respectively.

7. On the other hand, learned counsel for the Respondent No.3 has supported the award under appeal as passed by the Tribunal.
8. I have heard learned counsel for the parties and perused the entire record carefully.
9. From perusal of the record, it appears that Amrat Lal Patel, though a major son, but un-rebutted statement of his mother (AW-1) would reveal the fact that he was also dependant upon his deceased father. That apart, it is specifically pleaded by the claimants at para 'B' that they are dependant upon the deceased, yet, it was not denied specifically by the Non-Applicants, therefore, it cannot be said that they are not dependant upon him (deceased). The finding of the Tribunal holding that he (son) was not dependant upon his father, therefore, cannot be upheld. It appears further that the amount of compensation as determined by the Tribunal while assessing the monthly income of the deceased to the tune of Rs.4,500/-, even without considering the future prospects of his income and by applying the improper multiplier is unjustified and deserves to be modified.
10. According to the claimants, the deceased was a milk-vendor and was engaged in running a dairy farm while earning a sum of Rs.15,000/- per month. In support thereof, the widow of the deceased namely Smt. Buddhamati was examined herself and according to her unrebutted statement, her husband was involved in the said business. Her testimony was corroborated by

Damrudhar Patel (AW-2). It, thus, appears that the deceased was a milk-vendor and was engaged as such. However, in absence of any documentary evidence showing his monthly income to the tune of Rs.15,000/- per month, it cannot be held to be as such. In such circumstances, it would be appropriate to consider the deceased's income as of a skilled worker as provided under the Minimum Wages Act, 1948. As the alleged accident occurred on 16.06.2013, it would, therefore, be appropriate to consider the monthly income of the deceased to the tune of Rs.5,385/-, rounded off to Rs.5,400/-, yearly Rs.64,800/- prevailing at the relevant point of time as per the Notification issued by the Prescribed Authority under the said Minimum Wages Act, 1948. Since the deceased was 60 years old as evidenced by the Postmortem Report (Ex.P-3), therefore, while determining his actual income, an addition of 10% of it, i.e., Rs.6,480/-, towards future prospects of his income is to be made in the light of the principles laid down by the Supreme Court in the matter of **National Insurance Company Limited Versus Pranay Sethi and Others**, (*supra*). It would, thus, come to Rs.71,280/- (Rs.64,800/- + Rs.6,480/-) and as the claimants were dependant upon the deceased, deduction of 1/3rd, instead of 1/2 of it, i.e., Rs.23,760/-, towards personal and living expenses of the deceased would be appropriate and, the yearly dependency of the claimants would come to Rs.47,520/- (Rs.71,280/- - Rs.23,760/-). By applying the multiplier of 9, looking to the age of the deceased in view of the principles laid down by the Supreme Court rendered in the matter of **Sarla Verma (Smt) and Others Versus Delhi Transport Corporation and Another**, reported in (2009) 6 SCC

121, the total dependency would, thus, arrive at Rs.4,27,680/- (Rs.47,520/- x 9).

11. Besides, the widow and son of the deceased are entitled to be awarded loss of consortium under the head of spousal and parental consortium, as held in the matter of **Magma General Insurance Company Limited Versus Nanu Ram Alias Chuhru Ram and Others**, (supra) at the rate as held in the said matter of **Pranay Sethi** (supra). Consequently, in addition, the claimants are entitled to the following amounts towards conventional heads:-

S.No.	Modes of Compensation	Amount (In Rs.)
1.	For loss of spousal consortium to wife	40,000/-
2.	For loss of parental consortium to son	40,000/-
3.	For funeral expenses	15,000/-
4.	For loss of estate	15,000/-
	Total	Rs.1,10,000/-

12. Consequently, the Claimants would be entitled to a total sum of Rs.5,37,680/- (Rs.4,27,680/- + Rs.1,10,000/-) with 6% interest per annum from the date of filing of claim petition till the date of actual payment. Out of the said amount, the Claimant No.1/Appellant No.1 namely, Smt. Buddhmati, the widow would be entitled to a sum of Rs.4,00,000/-, while Claimant No.2/Appellant No.2 namely, Amrat Lal Patel (son) would be entitled to a sum of Rs.1,37,680/-, along with the said interest and, the same shall be disbursed to them as per the direction contained by the learned Tribunal.

13. In view of the above, the appeal is allowed in part to the extent indicated hereinabove with the aforesaid observation. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge

Deepti Jha