

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 171 of 2015**

1. Smt.Bhagwati Bai W/o Wd/o Late Patthar Singh Aged About 37 Years R/o Jarhabhata Bilaspur District Bilaspur C.G.
2. Master Lal Singh S/o Late Patthar Singh Aged About 15 Years Minor-Through their Mother Smt. Bhagwati Bai R/o Jarhabhata Bilaspur District Bilaspur C.G. ,
3. Master Vivek S/o Late Patthar Singh Aged About 13 Years Minor-Through their Mother Smt. Bhagwati Bai R/o Jarhabhata Bilaspur District Bilaspur C.G.
4. Master Yogesh Kumar S/o Late Patthar Singh Aged About 10 Years Minor-Through their Mother Smt. Bhagwati Bai R/o Jarhabhata Bilaspur District Bilaspur C.G.
5. Miss Gauri D/o Late Patthar Singh Aged About 7 Years Minor-Through their Mother Smt. Bhagwati Bai R/o Jarhabhata Bilaspur District Bilaspur C.G.

----Appellants**Versus**

1. Mahendra Kumar S/o Mohan Lal Aged About 29 Years R/o Gevara Basti Barpali P.S. Kusmunda Distt. Korba C.G.
2. Smt. J. Kanwar W/o Basant Kanwar R/o B/88 Vikas Nagar Kusmunda P.S. Kusmunda Distt. Korba C.G.
3. The United India Insurance Co. Ltd. Through- Branch Manager, Office At Vyapar Vihar Road Bilaspur District Bilaspur C.G.

---- Respondents

For Appellants:	: Shri Pravin Kumar Tulsyan, Advocate .
For Respondent No. 1:	: Deleted.
For Respondent No. 2:	: None, though served.
For Respondent No. 3:	: Smt. Chitra Shrivastava, Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J**Award On Board****08.01.2020**

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 21.11.2014 passed by the Third Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in Claim Case No. 30/2013 by which, the Claims Tribunal, while allowing the claim in part, has awarded a total amount of compensation to the tune of Rs.31,62,000/- (Rupees Thirty One Lakhs Sixty Two Thousand Only) with 6 % interest per annum from the date of filing of the claim petition till its realisation. 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 26.11.2012 at 6:30 AM, deceased Patthar Singh was going by his Motor Cycle from Village Chaitma to Tiwarta and as soon as he reached near Litiyakhar Dabri, he was dashed vehemently from its opposite side by the offending vehicle "Car" bearing its Registration No. CG-12/R/0160, owned by Non-Applicant No.2/Smt. J. Kanwar insured with Non-Applicant No. 3/The United India Insurance Company Limited. At the relevant time, the alleged offending vehicle was being driven rashly and negligently by its driver namely Mahendra Kumar, Non-Applicant No. 1. As a result of which, the alleged accident occurred and the deceased got injured badly and was admitted immediately into the hospital at Gevara, where he expired on 02.12.2012 during his treatment, giving rise to the institution of the Claim Petition enumerated under Section 166 of Act of 1988 wherein, it has been pleaded that the applicant was working as a Category-5 employee in SECL Gevara Project and used to earn to Rs. 36,675/- (Rupees Thirty Six Thousand Six Hundred and Seventy Five Only) per month and, thus, a total amount of compensation to the tune of Rs. Rs.1,12,08,032/- (Rupees One Crore Twelve Lakhs Eight

Thousand and Thirty Two Only) has been claimed under various heads.

3. Non-Applicant No. 1/Driver was proceeded *ex parte*, while Non-Applicant No. 2 also proceeded *ex parte* during trial. The Non-Applicant No. 3/Insurance Company has contested the Claim on the ground that the vehicle in question was being used in violation of the terms and conditions of the Insurance Company and, therefore, no liability could be fastened upon it.
4. After considering the evidence led by the parties, it has been held by the Claims Tribunal by its award impugned dated 21.11.2014 that the alleged accident occurred on 26.11.2012 due to rash and negligent driving of the driver of the offending vehicle resulting into the sad demise of Patthar Singh. It held further that the vehicle in question was not being used in violation of the Insurance policy and by considering further the monthly income of the deceased at Rs. 25,850/-, awarded total amount of compensation to the tune of Rs. 31,62,000/- with 6 % interest per annum from the date of filing of the claim petition till its realisation while fastening the liability upon the Insurance Company.
5. Being aggrieved, the Claimants have preferred this appeal. Shri Pravin Tulsyan, learned counsel appearing for the Appellants submits that a just and proper compensation payable to the Claimants has not been awarded as neither the monthly income of the deceased was considered in its proper manner nor future prospects was awarded. It is contended further that while assessing the amount of compensation, proper amount under conventional heads ought to have been granted. Having failed so, the Claims Tribunal has committed an illegality in awarding meager amount of compensation. In support, he placed his

reliance upon the decision rendered in the matter of *National Insurance Company Limited vs. Pranay Sethi and others* and *Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram And Others* reported respectively in (2017) 16 SCC 680 and in (2018) 18 SCC 130.

6. On the other hand, Smt. Chitra Shrivastava, learned counsel appearing for Respondent No. 3 has supported the award impugned.
7. I have heard learned counsel for the parties and perused the entire record carefully.
8. From perusal of the record, it appears that the deceased Patthar Singh was performing his duty as a Tender Category-5 in SECL Gavera Project and used to earn Rs. 36,675/- per month as evidenced by the pay slip marked as Ex. A-8C. K.A. Sundar (AW-3), who was the Senior Manager of the Gevara Project has not only certified the said document but has deposed further that the deceased was performing his duty in the said project since 1993 and his salary would not only have been increased but he would have been promoted also. It appears further from his evidence that after the death of said Patthar Singh, his wife was provided compassionate appointment. It therefore, appears that he was the salary paid employee of S.E.C.L. and used to earn Rs. 36,675/- per month. Considering the statement of the said witness, vis-a-vis the said documentary evidence produced by the Applicants in order to establish the monthly income of the deceased, the Claims Tribunal ought not to have reduced his monthly income from Rs. 36,675/- to Rs. 25,850/-. As a consequence, the monthly income of the deceased is held to be Rs. 36,675/-, yearly 4,40,100/-. Since the

deceased was a salary paid employee and was 40 years of age at the time of accident, therefore, an addition of 25% of it, i.e. Rs. 1,10,025/- was also required to be taken into consideration towards his future prospects in order to determine his income in view of the principle laid down in the matter of “*National Insurance Company Limited vs. Pranay Sethi*” (supra). It would, thus, work out at Rs.5,50,125/- (Rs.4,40,100/- + Rs.1,10,025/-). Since as many as 6 persons were dependent upon the deceased, therefore, while deducting 1/4th of it i.e. 1,37,531/- towards his personal expenses, the yearly dependency would thus arrive at Rs.4,12,594/- (Rs.5,50,125/- - Rs.1,37,531/-). As the age of the deceased at the time of the accident was 40, the multiplier applicable would be 15, as rightly held by the Tribunal. Therefore, by applying the multiplier of 15, the total dependency would come to Rs. 61,88,910/- (Rs.4,12,594/- x 15). In addition to this, the claimants would be entitled to further sum of Rs.3,10,000/- towards conventional heads according to the principle laid down in the matter of “*Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram And Others*” (supra) as under---

	Mode of Compensation	Amount
1.	loss of consortium to wife	Rs. 40,000/-
2.	loss of funeral expenses	Rs. 15,000/-
3.	loss of estate	Rs. 15,000/-
4.	Loss of love and affection to 4 minors at the rate of Rs. 50,000/- each	Rs.2,00,000/-
5.	Loss of filial consortium to mother	Rs. 40,000/-
	Total	Rs.3,10,000/-

9. The Claimants would, thus be entitled to a total sum of Rs.64,98,910/-

instead of Rs.31,62,000/- as assessed by the Claims Tribunal, along with interest at the rate of 6% per annum from the date of the filing of claim petition till its realisation.

10. The appeal is accordingly allowed to the extent indicated herein above. As far as other conditions as observed by the Claims Tribunal are concerned, they shall remain intact.
11. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

vivek