

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No.1398 of 2015****Reserved on 11.08.2020****Pronounced on 14.08.2020**

1. Smt. Usha Bai, W/o Late Budhram, Aged About 45 Years, R/o Village Demar, Police Station & Post Arjuni, Civil & Revenue District Dhamtari, Chhattisgarh (Claimant).
2. Smt. Rameshwari Bai, W/o Late Budhram, Aged About 45 Years, R/o Village Demar, Police Station & Post Arjuni, Civil & Revenue District Dhamtari, Chhattisgarh (Claimant).
3. Dhaneshwar, S/o Late Budhram, Aged About 16 Years, Minor Through Legal Guardian Mother Smt. Usha Bai, W/o Late Budhram, Aged About 45 Years, R/o Village Demar, Police Station & Post Arjuni, Civil & Revenue District Dhamtari, Chhattisgarh (Claimant).
4. Khileshwar, S/o Late Budhram, Aged About 11 Years, Minor Through Legal Guardian Mother Smt. Usha Bai, W/o Late Budhram, Aged About 45 Years, R/o Village Demar, Police Station & Post Arjuni, Civil & Revenue District Dhamtari, Chhattisgarh (Claimant).
5. Lalji, S/o Late Budhram, Aged About 14 Years, Minor Through Legal Guardian Mother Smt. Usha Bai, W/o Late Budhram, Aged About 45 Years, R/o Village Demar, Police Station & Post Arjuni, Civil & Revenue District Dhamtari, Chhattisgarh (Claimant).

---- Appellants

Versus

1. Neeraj, S/o Chhanu Lal Sahu, Aged About 31 Years, R/o Village Jijamgaon, Police Station & Post Kurud, Civil & Revenue District Dhamtari, Chhattisgarh (Driver of the Vehicle/Non-Applicant No.1).
2. Jagjeevan Singh, S/o Late Gurudev Singh, R/o Dak Bangla Ward, Dhamtari, Police Station & Post Dhamtari, Civil & Revenue District Dhamtari, Chhattisgarh (Owner of the Vehicle/Non-Applicant No.2).
3. Divisional Manager, The Oriental Insurance Company Limited, M.B. Trade, Balak Chowk, Dhamtari, Police Station & Post Dhamtari, Civil & Revenue District Dhamtari, Chhattisgarh (Insurer/Non Applicant No.3).

---- Respondents

For Appellants	: Mr. Kunal Das, Advocate.
For Respondent No.1	: Ms. Prakritee Jain, Advocate.
For Respondent No.2	: None, though served.
For Respondent No.3	: Mr. Anumesh Shrivastava, 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 02.09.2015 passed by the Chief Motor Accident Claims Tribunal, Dhamtari (C.G.) in Claim Case

No.17/2015, whereby the learned Tribunal while allowing the claim in part has awarded the total amount of compensation to the tune of Rs.3,71,000/- 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 27.05.2014 at about 11:30 pm, the deceased Budhram was returning to his village Demar from the village Sehradabri by his motorcycle and as soon as when he reached near the Rajdhani Rice Mill, he was hit vehemently from his back side by the offending vehicle '*Truck*' bearing Registration No.CG-05-A-2331 owned by Non-Applicant No.2/Jagjeevan Singh and was insured with Non-Applicant No.3/The Oriental Insurance Company Limited. The alleged accident occurred due to the rash and negligent driving of its driver namely Neeraj/Non-Applicant No.1, owing to which, the deceased sustained multiple serious injuries and was admitted into the District Hospital at Dhamtari but was declared there to be brought dead. A criminal case was, therefore, registered against the driver of the alleged offending vehicle in connection with Crime No.168/2014 and the charge-sheet was submitted after its investigation before the Judicial Magistrate First Class, Dhamtari with regard to the offence punishable under Sections 279 & 304-A of Indian Penal Code, 1860.
3. On account of the aforesaid accident, the claimants, who are two widows and minors of the deceased Budhram, instituted a claim

petition enumerated under Section 166 of the Act of 1988 by submitting *inter alia* that the deceased, a 45 years old, was working as a '*Brick-Maker*' apart from his agricultural work and used to earn Rs.11,000/- per month and, thus, total amount of compensation to the tune of Rs.32,00,000/- has been claimed under various heads.

4. While contesting the aforesaid claim, the driver and owner of the vehicle in question pleaded in their written statements that the deceased was himself responsible for the alleged accident, while the insurer of it has denied the claim on the ground that the driver of the alleged offending vehicle was driving the same without having the valid and effective driving license, therefore, no liability could be fastened upon it.
5. After considering the evidence led by the parties, it has been held by the Tribunal that the alleged accident occurred due to the rash and negligent driving by the driver of the alleged offending vehicle, resulting the sad demise of Budhram, who was found to be 45 years old. It held further that the vehicle in question was not being used in violation of the insurance policy and that by considering the income of the deceased to the tune of Rs.3,000/- per month awarded a total amount of compensation along with its interest as mentioned hereinabove, while fastening the liability upon the insurance company.
6. Being aggrieved, the Claimants have preferred this appeal. Mr. Kunal Das, learned counsel appearing for the Claimants/Appellants, submits that while determining the amount of compensation, the Tribunal has committed an illegality in assessing

the income of the deceased only to the tune of Rs.3,000/- per month and thereby erred in awarding a meagre amount of compensation even without considering the future prospects of his income. In support, he placed his reliance upon the decision rendered by the Supreme Court in the matter of **National Insurance Company Limited Versus Pranay Sethi and Others** reported in (2017) 16 SCC 680.

7. On the other hand, Mr. Anumesh Shrivastava, learned counsel appearing for the Non-Applicant No.3/Respondent No.3, has submitted that in absence of any proof of income of the deceased, the Tribunal has rightly considered his income to the tune of Rs.3,000/- per month, while determining the amount of compensation payable to the claimants, as such, the award impugned does not require to be interfered.
8. I have heard learned counsel for the parties and perused the entire record carefully.
9. From perusal of the record, it appears that the amount of compensation, as determined by the Tribunal while assessing the monthly income of the deceased to the tune of Rs.3,000/- only, even without considering the future prospects of his income is unjustified and deserves to be modified. According to the Claimants, the deceased was working as a '*Brick-Maker*' and the unrebutted statement of the deceased's wife, Smt. Usha Bai (AW-1) would show that he was engaged in the said business. But in absence of any cogent and reliable evidence, much less non-examination of his employer, deceased's monthly income cannot be

held to be Rs.11,000/- per month, as alleged by them. It would, thus, be appropriate to consider his income as provided under the Minimum Wages Act, 1948. As the alleged accident occurred on 27.05.2014, it would, therefore, be appropriate to consider his monthly income to the tune of Rs.5,468/-, rounded off Rs.5,500/-, yearly Rs.66,000/- 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 45 years old as evidenced by the Postmortem Report (Ex.P-7), therefore, while determining his actual income, an addition of 25% of it, i.e., Rs.16,500/- 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.82,500/- (Rs.66,000 + Rs.16,500/-) and that by looking to the number of the dependents, who are 5, deduction of one-fourth of it, i.e., Rs.20,625/-, towards his personal and living expenses, would be appropriate and the yearly dependency would, thus, come to Rs.61,875/- (Rs.82,500 – Rs.20,625). By applying the multiplier of 14, looking to the age of the deceased, the total dependency would, thus, be arrived at Rs.8,66,250/- (Rs.61,875 x 14).

10. Besides, the widow and minors 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**, reported in (2018) 18 SCC 130. 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 consortium to wives (jointly)	40,000/-
2.	For parental consortium to minors @ of Rs.40,000/- each	1,20,000/-
3.	For funeral expenses	15,000/-
4.	For loss of estate	15,000/-
	Total	Rs.1,90,000/-

11. The Claimants would, thus, be entitled to a total sum of Rs.10,56,250/- (Rs.8,66,250/- + Rs.1,90,000/-) with 6% interest per annum from the date of filing of claim petition till the date of actual payment.
12. In view of the above, the appeal is allowed in part to the extent indicated hereinabove. Rest of the observations as made by the Tribunal shall remain intact. No order as to costs.

Sd/-
(**Sanjay S. Agrawal**)
Judge