

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A(C) No.638 of 2015****Reserved on 16.10.2020****Pronounced on 20.10.2020**

1. Smt. Babi Das, W/o Late Somar Sai Aged About 42 Years R/o Ward No. 22 Satipara Ambikapur District- Surguja, Chhattisgarh
2. Ku. Punam Das D/o Late Somar Sai Aged About 16 Years Minor Through Natural Guardian Mother Smt. Babi Das W/o Late Somar Sai, R/o Ward No. 22 Satipara Ambikapur District- Surguja,
3. Ku. Puja Das D/o Late Somar Sai Aged About 14 Years Minor Through Natural Guardian Mother Smt. Babi Das W/o Late Somar Sai, R/o Ward No. 22 Satipara Ambikapur District- Surguja, Chhattisgarh,
4. Tej Pratap S/o Late Somar Sai Aged About 12 Years Minor Through Natural Guardian Mother Smt. Babi Das W/o Late Somar Sai, R/o Ward No. 22 Satipara Ambikapur District- Surguja, Chhattisgarh,

---- Appellants**Versus**

1. Manilal, S/o Dashrath Aged About 20 Years R/o Village Parsapara P.S. - Jainagar District Surajpur, Chhattisgarh
2. Shrikant Tiwari S/o Komal Tiwari Aged About 40 Years Through - Amarnath Tiwari Occupation- Owner, R/o Pathalgaon District- Jashpur, Chhattisgarh,
3. Branch Manager, Shriram General Insurance Company Limited Branch Office E/8 Riko Industrial Area Sitapur District- Jaipur, Rajasthan,

---- Respondents

For Appellants:	Shri AN Pandey, Advocate.
For Respondents No.1 & 2:	Notices are dispensed with.
For Respondent No.3:	Shri Deepak Gupta, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**C A V Award**

1. This Miscellaneous Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988) for enhancement of the award under Appeal dated 17.03.2015 passed by the 3rd Additional Motor Accidents Claims Tribunal, Ambikapur, District Surguja (CG)

(for short 'the Tribunal') in Claim Case No.162/2012 whereby, the Tribunal has awarded a total amount of compensation to the tune of Rs.4,93,000/- with interest @ 6% 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 Tribunal.

2. Briefly stated, the facts of the case are that the deceased Somar Sai was going along with his wife by a motorcycle 'Hero Honda' from Ambikapur to Village Gangoti. At the relevant time, he was dashed vehemently by the offending vehicle "Bolero" bearing Registration No.CG-04-H/0313 from its opposite side, which was being driven in a rash and negligent manner by its driver namely Manilal, Non-Applicant No.1. Owing to the alleged accident, the deceased got injured badly and succumbed to the injuries during the course of his treatment in the hospital. The matter was reported to the police station Surajpur against the driver of it under Sections 279 and 337 IPC and after its investigation, charge sheet was filed before the Chief Judicial Magistrate, Surajpur under Sections 279, 337, 338 and 304-A IPC.

3. On account of the aforesaid accident, the Claimants, who are the widow and minors of the deceased, instituted a Claim Petition under Section 166 of the Act of 1988 by submitting *inter alia* that the deceased, a 45 year old, was a motorcycle mechanic by profession and used to earn Rs.15,000/- per month and thus, claimed a total amount of compensation of Rs.20,74,000/- under various heads.

4. While disputing the alleged occupation of the deceased, it is pleaded by the driver and owner of the vehicle in question that the deceased himself was responsible for the alleged accident as he lost his control on the motorcycle while driving in a high speed and dashed the vehicle in question, which was

standing near the Supia drain. It is pleaded further that since the alleged offending vehicle was insured with Sriram General Insurance Company Limited, therefore, in case of any liability being fastened, they would be entitled to be indemnified by the said Company. While the insurer of it contested the claim mainly on the ground that the vehicle in question was being used without any permit and fitness certificate and was being driven by the said driver, who was not holding the valid and effective driving license in violation of the policy, therefore, no liability could be fastened upon it.

5. In support, the Claimants have examined as many as two of their witnesses, while none was examined by the Non-Applicants and the Tribunal, after considering the evidence led by the Claimants, arrived at a conclusion that the alleged accident occurred due to the rash and negligent driving by the driver of the alleged offending vehicle 'Bolero', resulting into the sad demise of Somar Sai, 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.4,500/- per month and that by deducting 1/3rd of it, towards personal and living expenses of him, awarded a total amount of compensation along with the interest as mentioned herein above, while fastening the liability upon the Insurance Company.

6. Shri AN Pandey, learned Counsel appearing for the Appellants/Claimants submits that while determining the amount of compensation, the Tribunal has committed an illegality in assessing the income of the deceased only to the extent of Rs.4,500/- per month and thereby erred in deducting 1/3rd of it while awarding the meager amount of compensation even without considering the future prospects of his income. According to him, the deceased was a motorcycle mechanic, and therefore, he

falls within the category of skilled worker and, thus, the amount of compensation ought to have been assessed in a proper manner. 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. vs. Pranay Sethi & Others and Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and others reported in 2017 (16) SCC 680 and (2018) 18 SCC 130 respectively.

7. On the other hand, Shri Deepak Gupta, learned Counsel for Non-Applicant No.3 has submitted that in absence of proof of income of the deceased, the Tribunal has rightly considered the same to the tune of Rs.4,500/- per month while determining the amount of compensation payable to the Claimants and, 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.4,500/- per month even without considering the future prospects of his income is unjustified and deserves to be modified.

10. According to the Claimants, the deceased was a motorcycle mechanic by profession and the unrebutted statement of his wife Smt Babi Das (AW-1) would show that he was engaged as such. However, in absence of any cogent and reliable evidence, his income cannot be held to be Rs.15,000/- per month as claimed by them. But the Claimants are entitled to be awarded

compensation on the basis of the wages of a deceased for a skilled worker as he was found to be a motorcycle mechanic, and therefore, it would be appropriate to consider his income as the skilled worker as provided in the Minimum Wages Act, 1948. As the alleged accident occurred on 27.04.2012, it would, therefore, be appropriate to consider his monthly income to the tune of Rs.4,950/-, rounded off to Rs.5,000/-, yearly Rs.60,000/- 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 certificate (Ex.P-7) issued by the Deputy Director of Education Department, Ambikapur, therefore, while determining his actual income, an addition of 25% of it i.e. Rs.15,000/- towards future prospects of his income is to be made in the light of the principles laid down in the said matter of Pranay Sethi (supra) . Accordingly, the actual income of the deceased would come to Rs.75,000/- (Rs.60,000/- + Rs.15,000/-) and that by deducting $\frac{1}{4}$ of it i.e, Rs.18,750/- towards his personal and living expenses, the yearly dependency would come to Rs.56,250/- (Rs.75,000/- - Rs.18,750/-). By applying the multiplier of 14, looking to the age of the deceased, the total dependency would thus arrive at Rs.7,87,500/- (Rs.56,250 x 14).

11. Besides, the widow and minors are entitled to be awarded loss of consortium under the heads of spousal and parental consortium as held by the Supreme Court in the matter of Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and others (supra) at the rate of Rs.40,000/- in the light of the principles laid down in the said matter of Pranay Sethi (supra).

12. Consequently, in addition, the Claimants are entitled to the following amounts towards conventional heads:-

Sl. No.	Mode of Compensation	Amount (in Rs.)
i.	For loss of spousal consortium	40,000/-
ii.	For loss of parental consortium to minors.	40,000/-
iii.	For funeral expenses	15,000/-
iv.	For loss of estate	15,000/-
	Total	1,10,000/-

13. Accordingly, the Claimants would be entitled to a total sum of Rs.8,97,500/- (Rs.7,87,500/- + Rs.1,10,000/-), instead of Rs.4,93,000 /- as awarded by the Tribunal with interest @ 6 % per annum from the date of filing the Claim Petition till the date of actual payment.

14. In view of above, the Appeal is allowed in part to the extent indicated above. Rest of the observations made by the Tribunal shall remain intact. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge