

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No.774 of 2015****Reserved on 11.08.2020****Pronounced on 18.08.2020**

1. Shagun Lal Verma, S/o Gayaram Verma, Aged About 55 Years, R/o Village-A-162, Housing Board Colony, Kota, Thana Sarwsati Nagar, Raipur, Tahshil & District Raipur, Chhattisgarh (Claimant).
2. Kumari Shobha Verma, D/o Shagun Lal Verma, Aged About 22 Years, R/o Village-A-162, Housing Board Colony, Kota, Thana Sarwsati Nagar, Raipur, Tahshil & District Raipur, Chhattisgarh (Claimant).
3. Kumari Anamika Verma, D/o Shagun Lal Verma, Aged About 18 Years, R/o Village-A-162, Housing Board Colony, Kota, Thana Sarwsati Nagar, Raipur, Tahshil & District Raipur, Chhattisgarh (Claimant).
4. Kumari Aakanksha Verma, D/o Shagun Lal Verma, Aged About 13 Years, Minor Through Natural Guardian Father Shagun Lal Verma, R/o Village-A-162, Housing Board Colony, Kota, Thana Sarwsati Nagar, Raipur, Tahshil & District Raipur, Chhattisgarh (Claimant).
5. Mehul Verma, S/o Shagun Lal Verma, Aged About 11 Years, Minor Through Natural Guardian Father Shagun Lal Verma, R/o Village-A-162, Housing Board Colony, Kota, Thana Sarwsati Nagar, Raipur, Tahshil & District Raipur, Chhattisgarh (Claimant). ---- **Appellants**

Versus

1. Arjun Sinha, S/o Dhan Singh Sinha, R/o Village Raita, Thana Dharshiwa, District Raipur, Chhattisgarh (Driver/Non-Applicant No.1).
2. Rahul Singhaniya, S/o Kailash Singhaniya, R/o Village Devendra Nagar, Sector 04, House No. D-136, Thana Devendra Nagar, District Raipur, Chhattisgarh (Owner/Non-Applicant No.2).

3. The Universal Sempo General Insurance Company Ltd., Through Branch Manager, Branch Office, Shanker Nagar in front of T.V. Tower, Raipur, Tahsil & District Raipur, Chhattisgrh (Insurer/Non-Applicant No.3).
- Respondents**

For Appellants	: Mr. A. L. Singroul, Advocate.
For Respondent Nos.1 & 2	: None, as notice dispensed with.
For Respondent No.3	: Mr. Amrito Das, along with Mr. P. Acharya, Advocates.

Hon'ble Shri Justice Sanjay S. Agrawal

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') for enhancement of the award under appeal dated 28.04.2015 passed by the 5th Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No.38/2012, whereby the learned Tribunal has awarded the total amount of compensation to the tune of Rs.5,63,200/- with 9% 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 before the Tribunal.

2. Briefly stated the facts of the case are that on 01.05.2012 at about 10:30 am, the deceased Smt. Anusuiya Verma was going along with her husband by a motorcycle while sitting behind him from Raipur to village Saguni for attending the wedding ceremony. At the relevant time, they were hit vehemently from the back side by the offending vehicle '*Haiwa-Truck*' bearing Registration No.CG-04-JC-2537 owned by Non-Applicant No.2/Rahul Singhania and insured with Non-

Applicant No.3/The Universal Sempo General Insurance Company Limited. The alleged offending vehicle was being driven in a rash and negligent manner by its driver Arjun Sinha/Non-Applicant No.1, as a result of which, it dashed the said motorcycle. Owing to the alleged accident, the deceased fell down and sustained multiple serious injuries and succumbed to the injuries on the spot. A criminal case was registered against the driver of it by the Police Station Dharsiwa and after investigating the matter, the charge-sheet was submitted before the Judicial Magistrate First Class, Raipur with regard to the offence punishable under Sections 279, 337, 338 & 304-A of the Indian Penal Code, 1860.

3. On account of the aforesaid accident, the claimants, who are husband and children of the deceased Smt. Anusuiya Verma, instituted a claim enumerated under Section 166 of the Act of 1988 by submitting *inter alia* that the deceased, a 45 years old, was engaged in embroidery work, apart from doing the tuition work and used to earn Rs.10,000/- per month and, thus, total amount of compensation to the tune of Rs.55,50,000/- has been claimed under various heads.
4. The driver and owner of the alleged offending vehicle were proceeded *ex parte*, while the insurer has denied the claim on the ground that at the relevant point of time, the vehicle in question was being used in violation of the insurance policy, as it was being used without any permit and fitness certificate by the driver, who was not even possessing the effective and valid driving licence and, 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, resulting into the sad demise of Smt. Anusuiya Verma. 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 the total amount of compensation as mentioned hereinabove.

6. Being aggrieved, the claimants have preferred this appeal. Mr. A. L. Singroul, learned counsel appearing for the 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.3,000/- per month and thereby erred in awarding a meager amount of compensation even without considering the future prospects of her income. According to him, the deceased was engaged in embroidery work, and therefore, falls within the category of the skilled worker and, as such, 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 matter of **Sanjay Kumar Versus Ashok Kumar and another** reported in **(2014) 5 SCC 330**.
7. On the other hand, Mr. Amrito Das, learned counsel appearing for Non-Applicant No.3, has submitted that in absence of proof of income of the

deceased, the Tribunal has rightly considered her 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/- even without considering the future prospects of her income is unjustified and deserves to be modified. According to the claimants, the deceased was engaged in the embroidery work and the unrebutted statement of her husband (AW-1) would show that she was engaged as such, but in absence of any cogent and reliable evidence, her income cannot be held to be Rs.10,000/- per month, as claimed by them. However, the claimants are entitled to be awarded compensation on the basis of the wages of a deceased for a skilled worker as she was found to be engaged in embroidery work, in the light of the principles laid down by the Supreme Court in the matter of **Sanjay Kumar vs. Ashok Kumar and another (supra)**, wherein it has been observed at paras 9 and 10 as under:-

“9. In our considered view, the appellant is entitled to be awarded compensation based on the wages for a skilled worker, as he is an embroiderer and the same cannot be considered as an unskilled work. The minimum wages in Delhi for a skilled worker as on 1-8-2005 was Rs.3589.00 per month.

10. Thus, in the present case, a monthly income

of Rs.4500 as claimed by the appellant for his work as an embroiderer is reflective of ground realities and is not exorbitant by any standard and in the interest of justice, we should accept his claim. Further, he was also not cross-examined on the aspect of the nature of his work as an embroiderer and both the Tribunal and the High Court have erred in holding that the appellant's work was of an unskilled nature.”

10. Based upon the aforesaid principles, it would, thus, be appropriate to consider the deceased's income as a skilled worker as provided under the Minimum Wages Act, 1948. As the alleged accident occurred on 01.05.2012, it would, therefore, be appropriate to consider her monthly income to the tune of Rs.4,940/-, 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 Postmortem Report (Ex.P-4), therefore, while determining her actual income, an addition of 25% of it, i.e., Rs.15,000/-, towards future prospects of her 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**, reported in (2017) 16 SCC 680. It would, thus, come to Rs.75,000/- (Rs.60,000/- + Rs.15,000/-) and that by deducting one-fifth of it, i.e., Rs.18,750/-, towards personal and living expenses, as done by the Tribunal, 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 husband and children are entitled to be awarded loss of consortium under the head of spousal and parental consortium as held by the Supreme Court in the matter of **Magma General Insurance**

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reported in **(2018) 18 SCC 130**. Consequently, in addition, the claimants are entitled to the following amounts towards conventional heads:-

Sl. No.	Modes of Compensation	Amount (in Rs.)
(i)	For loss of spousal consortium to husband	40,000/-
(ii)	For loss of Parental consortium to children @ Rs. 40,000/- each	1,60,000/-
(iii)	For funeral expenses	15,000/-
(iv)	For loss of estate.	15,000/-
	Total:	Rs.2,30,000/-

12. Consequently, the Claimants would be entitled to a total sum of Rs.10,17,500/- (Rs.7,87,500/- + Rs.2,30,000/-), with 9% interest per annum from the date of filing of the claim petition till the date of actual payment.
13. 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