

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 1275 of 2015**

1. Smt. Nisha Kiran W/o Late Aanchal Uraon, Aged About 22 Years R/o Village Barhaguda Charpali, Police Station - Chandrapur, Tahsil - Dabhra, District - Janjgir Champa Chhattisgarh.
2. Jagatram Uraon S/o Dunaram Uraon, Aged About 52 Years R/o Village Barhaguda Charpali, Police Station - Chandrapur, Tahsil - Dabhra, District - Janjgir Champa Chhattisgarh,
3. Smt. Fuleshwari Bai W/o Jagatram Uraon, Aged About 48 Years R/o Village Barhaguda Charpali, Police Station - Chandrapur, Tahsil - Dabhra, District - Janjgir Champa Chhattisgarh.....Claimants,

---- Appellants**Versus**

1. Rameshwar Das S/o Fatkandas Mahant, Aged About 25 Years R/o Timarlaga, Police Station And Tahsil - Sarangarh, District - Raigarh Chhattisgarh.....Vehicle Driver.
2. Ashish Kumar Gupta S/o Kishore Gupta, Aged About 55 Years R/o Jawahar Colony, Kharsia, Tahsil - Kharsia, District Raigarh Chhattisgarh.....Vehicle Owner.
3. Ifco Tokio General Insurance Company Limited Through Branch Manager, Branch Office-First Floor, Galaxy Heights, Near I.C.I.C.I. Bank, Bilaspur, District - Bilaspur Chhattisgarh..... Non-Applicants,

---- Respondents

For Appellants:	Shri Basant Dewangan, Advocate.
For Respondents No. 1 & 2:	None, though served.
For Respondent No.3:	Ms. Pratibha Das, Advocate appears on behalf of Shri Amrito Das, Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J**Award On Board****27.02.2020**

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, 1988') questioning the legality and propriety of the award dated 30.06.2015 passed by Second Additional Motor Accident Claims Tribunal (hereinafter referred to as 'the Claims Tribunal') Sakti, District Janjgir-

Champa (C.G.) in Motor Accident Claim Case No.13/14, whereby, the learned Claims Tribunal while allowing the claim in part has awarded a total sum of Rs.4,57,000/- with 7% interest per annum from the date of the award till its realization while fastening the liability upon the Insurance Company. 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 13.05.2014, deceased Aanchal Uraon was coming by his motorcycle from village Barhaguda to village Chandrapur and at the relevant time, he was dashed vehemently by the offending vehicle "Bus" bearing its registration No. C.G.-13-A-5706, which was owned by Non-applicant No.2- Ashish Kumar Gupta and was insured with Non-applicant No.3- Ifco Tokio General Insurance Company Limited. At the relevant time, the vehicle in question was being driven rashly and negligently by its driver, namely, Rameshwar Das, Non-applicant No.1, owing to which, the alleged accident occurred and the deceased injured badly and was admitted into the hospital at Chandrapur, where he expired during the course of his treatment.

3. On account of the aforesaid accident, the Claimants, being legal representatives of the deceased Aanchal Uraon, instituted a claim under Section 166 of the Act, 1988 claiming a total amount of compensation to the tune of Rs.26,26,000/- by alleging *inter alia* that the deceased, 26 year old, was a *Rajmistri* by profession and used to earn Rs.4,500/- per month.

4. The Non-applicants have contested the aforesaid claim and the Claims Tribunal after considering the evidence led by the parties held that the alleged accident occurred on 13.05.2014 due to rash and negligent driving by the driver of the offending vehicle "Bus" resulting into the sad

demise of said Aanchal Uraon. It held further that the vehicle in question was not being used in violation of the insurance policy and that by assessing the monthly income of the deceased to the tune of Rs.3,000/-, yearly Rs.36,000/-, awarded a total amount of compensation as mentioned herein above.

5. Being aggrieved, the Claimants have preferred this appeal. Shri Basant Dewangan, learned counsel appearing for the Appellants/Claimants submits that the award impugned as passed by the Claims Tribunal is apparently on lower side. According to him, the Tribunal has committed an illegality in disbelieving the documentary evident like Ex.P.7, the certificate issued by the Programme Officer, Janpad Panchayat, Sakti and thereby erred in assessing the monthly income of the deceased only to the extent of Rs.3,000/-. However, according to the said certificate, it ought to have been at least Rs.4,100/- per month. It is contended further that without considering the future prospects of the income of the deceased and without providing sufficient amount of compensation towards conventional heads, the Tribunal has erred in not providing just and fair compensation payable to the Claimants.

6. On the other hand, 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, the amount of compensation as awarded by the Claims Tribunal while assessing the monthly income of the deceased to the tune of Rs.3,000/- by disbelieving the said certificate (Ex.P.7) and even without considering the future prospects of the income

of the deceased appears to be unjust and deserves to be modified.

9. It appears from perusal of the record that the deceased was a *Rajmistri* by profession and was found to be 25 years old at the time of accident. It is true that no documentary evidence has been placed on record showing the income of the deceased, but the Claimants have produced the certificate (Ex.P.7) which was issued by the Programme Officer, Janpad Panchayat, Sakti. According to it, the wages of the unskilled employee has been shown as Rs.157/- per day. The alleged certificate has duly been admitted in evidence as no objection regarding its admissibility was questioned by the Non-applicants. As such, the Tribunal has erred in disbelieving the said certificate. By placing reliance upon it, the monthly income of the deceased would be Rs.4,100/- (Rs.157 x 26 = Rs.4082/-, rounded off Rs.4100/-). While determining the income of the deceased, who was found to be 25 years old, an addition of 40% of it towards future prospects of his income is to be taken into consideration in order to provide just and proper compensation payable to the Claimants as held in the matter of ***National Insurance Co. Ltd. vs. Pranay Sethi*** reported in **2017 (16) SCC 680**.

10. Considering the aforesaid facts and circumstances of the case and in view of the principles laid down in the aforesaid decision, I deem it proper to assess the monthly income of the deceased as Rs.4,100/-, yearly, 49,200/- and that by adding 40% of it, i.e., Rs.19,680/- (Rs.49,200/- x 40%) towards future prospects of his income, it would then be worked out at Rs.68,880/- (Rs.49,200/- + Rs.19,680/-). Since the number of family members dependent upon the deceased was 3, therefore, after deducting one-third of it, i.e., Rs.22,960/- towards his personal and living expenses,

yearly dependency would be worked out at Rs.45,920/- (Rs.68,880/- - Rs.22,960/-). By applying the multiplier of 18, as the deceased was found to be 25 years old at the time of accident, the total dependency would thus be arrived at Rs.8,26,560/-. In addition to this, the Claimants would be entitled to a sum of Rs.70,000/- instead of Rs.25,000/- towards conventional heads as under:-

Mode of compensation	Amount Rs.
(i) Loss of consortium to wife	- 40,000/-
(ii) Funeral expenses	- 15,000/-
(iii) Loss of estate	- 15,000/-
Total	- Rs.70,000/- =====

11. The Claimants would, thus, be entitled to a total amount of compensation to the tune of Rs.8,96,560/-, instead of Rs.4,57,000/-, as awarded by the Tribunal and the same shall carry interest at the rate of 7% per annum from the date of the award impugned till its realization.
12. The appeal is, accordingly, allowed in part to the extent indicated herein above. Rest of the observations made by the Claims Tribunal shall remain intact. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE