

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 274 of 2015**Order reserved on : 25.06.2021Order Delivered on: 20. 07.2021

1. Mahavir Chand Golchchha S/o Late Siremal Golchchha Aged About 43 Years R/o Bazarpara Kondagaon Tahsil Kondagaon District Kondagaon Chhattisgarh.
2. Smt. Kiran Golchchha W/o Mahair Chand Golchchha Aged About 40 Years R/o Bazarpara Kondagaon Tahsil Kondagaon District Kondagaon Chhattisgarh.

---- Appellants**Versus**

1. Ramlal Markam S/o Ratanlal Markam R/o Bada Bhirawand Tahsil Kondagaon District Kondagaon Chhattisgarh.
2. Bal Chandra Netam S/o Rangsay Netam R/o Bada Bhirawand Tahsil Kondagaon District Kondagaon Chhattisgarh.
3. Branch Manager S/o The Reliance General Insurance Co. Ltd. Shop No. 412-413 Frouth Floor Ravi Bhawan Jaystambh Chowk Raipur Chhattisgarh.

---- Respondents

For Appellants	:	Shri Praveen Tulsyan, Advocate.
For Respondents	:	None.

Hon'ble Smt Justice Rajani Dubey**C A V Order****20.07.2021**

1. This appeal arises out of the award dated 14.10.2014 passed by Additional Motor Accident Claims Tribunal (F.T.C.) Bastar at Jagdalpur (C.G.), in Claim Case No. 47/2013 awarding a compensation of Rs. 9,47,500/- with interest @ 9%

per annum, in favour of the appellants/claimants for the death of Dinesh Kumar Golchchha.

2. Facts of the case in brief are that on 07.04.2009 at about 10.30 PM, when deceased Dinesh Kumar Golchchha was going to Village Bafana with his friend Avinash on motor cycle as pillion rider, he was dashed by offending Tractor No. CG-04 D-9235 and Trolley No. CG-04 D-9236 which was being driven by respondent No.1 herein in a rash and negligent manner, as a result of which, Dinesh Kumar Golchchha sustained grievous injuries on his body and during treatment he died. A claim petition was filed by the appellants/claimants who happen to be the legal heirs (father and mother) of the deceased claiming a compensation of Rs. 24,79,000/- *inter alia* pleading that the deceased died due to negligent driving of the offending vehicle, at the relevant time he was aged about 29 years, doing business of grains (wholesale grocery shop) at Bazar Para, Kondagaon and his earning was Rs. 15,000/- per month.

3. Pleading of the claimants have, however, been denied by the respondents No. 1 & 2 driver and owner of the offending vehicle respectively and also by respondent No.3, Insurance Company.

4. After evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs. 9,47,500/-

along with interest @ 9% per annum in favour of the appellants/claimants taking the net income of the deceased as Rs. 1,05,000/- per annum, applying the multiplier of 17 and deducting 1/2 towards his personal expenses. Hence, this appeal for enhancement.

5. Counsel for the appellants/claimants submits that the compensation awarded by the Tribunal is on the lower side and needs to be enhanced suitably. He further submits that learned Claims Tribunal has wrongly deducted the 1/2 for personal expenses from the income of the deceased ignoring that there are two dependents in this instant case, therefore, deduction should be 1/3. He further contended that the Claim Tribunal has not considered the future aspect of the income of the deceased as per decisions of the Hon'ble Supreme Court of India in the matters of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.** passed in **(2009) 6 SCC 121** and **Rajesh & Ors. Vs. Rajbir Singh & Ors.** reported in **(2013) 9 SCC 54**. It is further submitted that the learned Claims Tribunal has not awarded sufficient amount for funeral expenses, loss of love and affection and estate. Hence, compensation awarded by the Claims Tribunal deserves to be enhanced. In support of his argument, learned counsel for the appellants placed reliance on the decision of Hon'ble Supreme Court in the matter of **Magma General Insurance Co. Ltd. Vs. Nanu** reported in **AIR Online 2018 SC 189**.

6. No one appeared on behalf of the respondents on the date of argument.

7. Heard counsel for the appellants and perused the documents on record.

8. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper and based on the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

9. Now, this Court shall examine as to whether the compensation of Rs. 9,47,500/- awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

10. From the pleadings of the respective parties and the overall evidence on record it is clear that the accident occurred with the offending vehicle which was insured with respondent No.3 and was being driven by respondent No.1. Evidence further goes to show that offending vehicle was being driven in rash and negligent manner. The appellants/claimants have filed documents (Ex. A/8 to Ex. A/10), income tax return of deceased and examined C.P. Danpalan Nair (AW-3), Income Tax Officer, Jagdalpur who stated in his statement that deceased Dinesh Kumar Golchchha S/o. Mahavir Chand Golchchha was an income tax

payer, corroborated the income tax account & PAN number of the deceased and evaluated total annual income of the deceased Rs. 1,05,000/-. The Tribunal, on the basis of statement of C.P. Danpalan Nair (AW-3) and documents (Ex.A/8 to Ex.A/10) recorded its finding that yearly income of the deceased was Rs. 1,05,000/-, deducted 1/2 share Rs. 52,500/- for personal expenses on the basis of Hon'ble Apex Court's Judgment in light of **Magma (Supra)**. The Hon'ble Supreme Court held in para 8.7. as under:-

“8.7. A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal Parlance, “consortium” is a compendious term which encompasses 'espousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, cooperation, affection, and aid of the other in every conjugal relation.”

Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training.”

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child.

11. The learned trial Court did not calculate future aspects and loss of filial consortium Rs. 40,000/- for each claimant.

Learned Tribunal has awarded Rs. 10,000/-, Rs. 20,000/- and Rs. 25,000/- under the heads loss of estate, loss of love and affection and funeral expenses respectively, which in the facts and circumstances of the present case and in view of the judgment of Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. v. Pranay Sethi¹**, is inadequate. The Supreme Court in the matter of **National Insurance (Supra)** dealt with the various heads under which compensation is to be awarded in a death case. Thus, keeping in view all these things, above discussion and in view of decisions of Hon'ble Supreme Court in the matter of **National Insurance (supra)**, this Court is of the view that the amount awarded by the Claims Tribunal is on lower side and requires reconsideration. The claimants/appellants are entitled for compensation in the following manner:-

Particular	amount
Income	Rs.1,05,000/-
Future Prospect	Rs. 42,000/- (i.e. 40% of the income)
Deduction towards living and personal expenses	Rs. 1,47,000 x 1/2 = 73,500/-
Total income	Rs. 73,500/- per year
Multiplier applied	17 (73,500 x 17 = 12,49,500/-)
For funeral expenses	Rs. 25,000/-
Loss of Estate	Rs. 15,000/-

¹ (2017) 16 SCC 680

For filial consortium	Rs. 80,000/- [Rs. 40,000/- payable to each of parents (appellants/claimants No. 1 & 2)]
Total	Rs. 13,69,500/-
Amount awarded by the Tribunal	Rs. 9,47,500/-
Difference of amount	Rs. 4,22,000/-

12. Thus, the total compensation including the amount awarded on conventional heads comes to Rs. 13,69,500/- for which the claimants are entitled to receive as compensation, is just and proper, for the death of deceased Dinesh Kumar Golchchha. Since the Tribunal has already awarded Rs.9,47,500/-, after deducting the same the claimants/appellants are entitled for enhancement of amount of Rs. 4,22,000/-. This additional amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. The amount received by the claimants, if any, shall be adjusted in the enhanced sum.

14. Appeal is thus allowed in part with the modification in the award impugned as indicated above.

Sd/-

(Rajani Dubey)
Judge

V/-