

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 457 of 2015**

1. Smt. Alis Kalpana Kujur, Wd/o Anthresh Kujur, Aged About 25 Years
2. Minor Anuska @ Butyrose Kujur D/o Late Anthresh Kujur Aged About 2 Years  
For Appellant 2 Through next Friend Her Mother Smt. Alis Kalpana Kujur (Appellant-1)  
Both R/o Village Chaylitangartoli, P.S. Jashpur Tahsil And District Jashpur Civil And Revenue District Jashpur Chhattisgarh

**---- Appellants/Claimants****Versus**

1. Sayad Ikabal Aalam, S/o Late Sayad Mohammad Jakariya, Marhum Sd M D Jakariyanch, R/o Village Rupnarayanpur, Post Barkola Police Kharagpur (L) West Medinipur 721101 District Medinipur West Bengal (Owner)
2. Kalimuddin S/o Husmuddin Aged About 31 Years Occupation – Driver, R/o Village Narvota, Police Station Sarbha, District Devghar Jharkhand (Driver)
3. Reliance General Insurance Company Limited, Policy Servicing Office 1<sup>st</sup> Floor- Ms Tower, OT Road Medinipur, Kharagpur West Bengal 721305 Local Branch Office, Shop No. 412-413, 4<sup>th</sup> Floor, Ravi Bhawan Jaistumbh Chowk Raipur District Raipur Chhattisgarh (Insurer)

**----Respondents**


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|--------------------------|------------------------------------|
| For Appellants           | : Shri Rishikant Mahobia, Advocate |
| For Respondents- 1 and 2 | : None appears                     |
| For Respondent- 3        | : Shri Rohitashwa Singh, Advocate  |

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**Hon'ble Shri PR Ramachandra Menon, Chief Justice &**  
**Hon'ble Shri Justice Parth Prateem Sahu**  
**Order on Board**

**Per Parth Prateem Sahu, J.**  
**02.02.2021**

1. Challenge in this appeal is to the award dated 26.02.2015 passed by the Additional Motor Accident Claims Tribunal, Jashpur (for short, 'Claims Tribunal') in Claim Case-12 of 2014, whereby learned Tribunal allowed the application for compensation in part and awarded Rs.7,27,800/- as total compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 09.03.2013, Unthres Kujoor (since deceased) was travelling on Motorcycle along with appellants/claimants and going to Jashpur through village Chaileetangartoli, Jaamtoli and Bhalbanda. On the way, one Truck bearing No.WB29-7684 (for short, 'offending vehicle') driven by NA2 rashly and negligently, dashed the Motorcycle and caused accident. Unthres Kujur and appellants suffered grievous injuries over their person. They were taken to hospital at Jashpur, during the course of treatment Unthres Kujur died.

3. Appellants/claimants who are widow and child of the deceased filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.36,25,000/- pleading therein that on the date of accident, deceased was 32 years able bodied person. He was working as Mechanic of Tractor Trailer and other agriculture machineries, earning Rs.10,000/- per month.

4. NA 1 and 2, who are owner and driver of offending vehicle submitted reply to the claim application denying the pleadings made therein. They denied the fact of accident. On the date of accident, offending vehicle was insured with NA3/Insurance Company. Liability if any, would be upon the Insurance Company to pay amount of compensation.

5. NA3 /Insurance Company submitted reply to the claim application while denying the pleadings made therein. It is further pleaded that offending vehicle was not involved in the accident. The accident was a result of negligence on the part of deceased himself. There was breach of policy conditions, because NA1 was not possessed with valid and effective driving license, there was no valid permit and fitness certificate of the offending vehicle.

6. Learned Claims Tribunal on appreciation of pleadings and evidence brought on record by the respective parties, held that deceased died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by NA2/respondent-2, contributory negligence and breach of policy conditions were not found to be proved and awarded Rs.7,27,800/- as total compensation.

7. Shri Rishikant Mahobia, learned counsel for the appellants submits that learned Claims Tribunal erred in awarding meagre amount of compensation by assessing income of deceased as Rs.4,800/- only. No amount of compensation has been awarded towards future prospects overlooking the age of deceased as 32 years. He further pointed out that learned Claims Tribunal has awarded consolidated amount of Rs.75,000/- only as compensation towards other conventional heads which is on lower side. Lastly, he contended that learned Claims Tribunal has applied lesser multiplier.

8. He places his reliance on the judgments passed by Hon'ble Supreme Court in cases of **National Insurance Company Limited Vs Pranay Sethi and others**, (2017) 16 SCC 680 and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others**, (2018) 18 SCC 130 in support of his contention.

9. No one appeared on behalf of respondents- 1 and 2.

10. Shri Rohitashwa Singh, learned counsel for respondent-3 Insurance Company submits that learned Claims Tribunal has taken Income of the deceased as Rs.200/- per day considering nature of occupation as pleaded and

stated by the appellants/claimants. Learned Claims Tribunal has taken 24 working days and assessed monthly income of the deceased, which cannot be said to be erroneous. He further contended that learned Claims Tribunal has awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference.

11. We have heard learned counsel for the respective parties and also perused record.

12. To appreciate the submissions of learned counsel for the appellants with regard to monthly income of deceased, assessed by the Claims Tribunal, perusal of record would show that claimants in support of their pleadings regarding occupation of deceased, have placed on record Ex.A10, which is the training certificate issued by Central Farm Machinery Training & Testing Institute of the Government of India. It is a certificate of training of mechanic of Farm Machinery Utilisation and Maintenance. In claim application, they have pleaded occupation of deceased as Tractor and agriculture equipments mechanic.

13. In view of aforementioned facts and documents available on record, particularly, taking into consideration Ex.A10, occupation of deceased working as Mechanic cannot be said to be false pleading or statement. The deceased was working as Mechanic and his occupation comes within the category of skilled labourer. Accident was of 09.03.2013. True, it is that appellants/claimants have failed to produce proof of income by placing any document or reliable piece of evidence but then, income of the deceased for the purpose of calculating amount of compensation under the Act of 1988 is required to be assessed on notional

basis taking into consideration nature of occupation, date of accident, cost of living, wage structure etc.

14. Considering the overall facts and circumstances of the case, we find it appropriate to reckon income of deceased as Rs.6,000/- per month.

15. So far as other submissions made by learned counsel for the appellants that Claims Tribunal had not awarded any amount towards future prospects is concerned, Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has settled the issue in this regard and held thus :

“59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

16. In the case at hand, age of deceased has been accepted to be 32 years by the Tribunal. As such, he was below 40 years, hence there shall be addition of 40% of his established income towards future prospects in the monthly established income of the deceased.

17. Learned Claims Tribunal has applied multiplier of 17 which is on higher side. In case of **Sarla Verma and others Vs Delhi Transport Corporation and another**, (2009) 6 SCC 121, Hon'ble Supreme Court has held the application of multiplier of 16 for the victim in age group of 31-35. In the facts of the case, appropriate multiplier will be 16 instead of 17. It is ordered accordingly.

18. Deduction of  $\frac{1}{3}^{\text{rd}}$  is in consonance with the law laid down by Hon'ble Supreme Court in case of **Sarla Verma** (supra).

19. In view of the facts and circumstances of the case, we find it appropriate to re-calculate the amount of compensation, which is as under:

a) Income of the deceased is taken @ Rs.6,000/- per month and Rs.72,000/- (6000 x 12) per annum.

b) By adding 40% of his established income towards future prospects, total yearly income comes to Rs.1,00,800/- {72000 + (72000 x 40/100)}.

c) There will be deduction of  $\frac{1}{3}^{\text{rd}}$  towards personal and living expenses, yearly loss of dependency comes to Rs.67,200/- {100800 — (100800 x  $\frac{1}{3}$ )}.

d) Upon multiplying the yearly loss of dependency with 16, total loss of dependency comes to Rs.10,75,200/- (67200 x 16).

e) Apart from above total loss of dependency, claimants are further entitled for Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- for parental consortium, Rs.15,000/- for loss of estate, and Rs.15,000/- for funeral expenses.

20. Now the claimants are entitled for a sum of **Rs.11,85,200/-** (1075200 + 40000 + 40000 + 15000 + 15000).

21. Aforementioned total amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realisation.

22. There is no provision under the Act of 1988 for awarding Penal interest, hence, award of Penal interest @ 12% is hereby set aside. Other conditions imposed by the Tribunal shall remain intact.

23. The appeal is allowed in part and impugned award is modified to the extent as indicated above.

Sd/-  
**(PR Ramachandra Menon)**  
**Chief Justice**

Sd/-  
**(Parth Prateem Sahu)**  
**Judge**