CGHC010343862023

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1711 of 2023

Branch Manager The New India Assurance Company Limited (Wrongly Mentioned Insurance) L. I. C. Building, Commercial Premises, First Floor, Opposite Shayam Square Pandri, Raipur, Tahsil And District Raipur, Chhattisgarh, *through* - Authorized Signatory, For New India Assurance Company Limited, Manager, T.P. Claim Hub, Rama Trade Centre, Second Floor, Opposite Rajiv Plaza, Old Bus Stand, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh. **... Appellant**

versus

1 - Manoj Nirmalkar S/o Derharam Nirmalkar Aged About 53 Years R/o Village Ward No.- 18, Vardamaan Nagar Mahasamund, Tehsil and District Mahasamund, Chhattisgarh.

2 - Derharam Nirmalkar Aged About 75 Years R/o Village Ward No.- 18, Vardamaan Nagar Mahasamund, Tehsil and District Mahasamund, Chhattisgarh.

3 - Smt. Dulari Nirmalkar W/o Derharam Nirmalkar Aged About 69 Years R/o Village Ward No.- 18, Vardamaan Nagar Mahasamund, Tehsil and District Mahasamund, Chhattisgarh.

4 - Sonuram Kosariya S/o Vedprakash Kosariya Aged About 24 Years R/o Village Bemcha, Police Station Tahsil and District Mahasamund, Chhattisgarh.

5 - Uttar Kumar Verma Aged About 46 Years R/o Ward No. 10 Ekta Chowk Mahasamund, Police Station, Tahsil and District Mahasamund, Chhattisgarh. **... Respondents**

For the appellant	**:**	Mr. B. N. Nande, Advocate along with Mr. Abhishek Mishra, Advocate
For Respondents 1 to 3	**:**	Mr. Devesh Kela, Advocate

(Hon'ble Shri Justice Sanjay Kumar Jaiswal)

Order on Board

04.11.2026

1. This appeal under Section 173 of Motor Vehicles Act, 1988 (for short "MV Act") has been filed by the Insurer challenging the quantum of the impugned award dated 13.07.2023 passed by the Motor Accidents Claims Tribunal, Mahasamund, Chhattisgarh in Claim Case No. H-136 of 2022 whereby a total compensation of Rs.30,94,000/- has been awarded to the claimants.

2. The claimants have also filed cross objections seeking further enhancement of the award to the tune of Rs.10,06,000/- in addition to the amount already awarded by the Tribunal.

3. As per the facts pleaded in claim application filed under Section 166 of the MV Act, deceased Komal Kant Nirmalkar died in a motor accident took place on 18.06.2022 due to rash and negligent driving of respondent no.1 who drove the offending Car No. C.G. 04-HK/1140 and hit the motorcycle of deceased. Appellant No.1 is father and appellants 2 & 3 are grand parents of the deceased. They being legal heirs have filed claim application u/s 166 of the M.V. Act, seeking a total compensation of Rs. 41 lakhs.

4. Learned counsel for the appellant contends that the Tribunal determined the income to be ₹15,000 based on the salary slip (Exhibit P-15/C) and the statement of Mukesh Kumar (A.W.3); however, the attendance register (Exhibit P-20) shows that the amount paid varied each month, and witness Mukesh Kumar has admitted that no register recording the daily payment of ₹500 has been produced. Therefore, the income taken by the Tribunal is on higher side. Since deceased was unmarried, one half towards personal expenses should have been deducted instead of 1/3rd.

He prays that the award may suitably be modified.

5. Learned counsel appearing for the respondents-claimants submits that considering the evidence of Mukesh Kumar (A.W.3) and the document (Ex.P-15C) the Tribunal has properly taken the monthly income of deceased to Rs.15,000/- which needs no interference. Learned counsel for the appellant contends that since it was a private-sector job rather than a permanent position, 50 percent future prospects is appropriate and not 40%.

6. I have heard learned counsel for the parties, considered their rival submissions and perused the record with utmost circumspection.

7. The claimants pleaded that the deceased was earning of Rs.15,000/- per month by doing the job of computer assistant and salesman and the tribunal considering the evidence of Mukesh Kumar (A.W.3) and the salary slip (Ex.P-15-C) took the income of Rs.15,000/- per month.

8. In this regard, The claimant witness Mukesh Kumar (A.W.3) has stated in his evidence that he is owner of Manish Automobil where the deceased Komalkant was working and they use to pay Rs.500/- per day. He has also admitted the fact that each day, the workers' attendance is marked in the attendance register when they attend to work in the shop. The salary certificate produced by him shows that he was receiving a monthly wages of Rs.15,000/-. However, it is stated he did not maintain separate accounts for the monthly salary of Rs.15,000/- paid to the deceased. This witness has further deposed that he did not maintain account statements regarding the salaries paid to the employees. His evidence further go to show that though he had shown the details of the employees salaries in his income tax returns but did not produce those tax returns before the Tribunal.

9. The details of entries made in the attendance register (Ex.P-20) shows that the payments made to the deceased for the work done by him

for the last three months- March, April and May 2022 were Rs. 13,000, 13000/- and Rs.13,500 respectively. Therefore, it appears that the monthly payment amounts made to him are not uniform. Furthermore, Mukesh Kumar (A.W.3) has not produced any assessment details regarding the income derived in his automobile showroom. Considering the fact that the monthly payment amounts are inconsistent and the workers are paid @ Rs.500/- per day for the number of days they work in a calendar month and in absence of any tax-returns, it would be appropriate to reduce the monthly income to Rs.13,000/- from Rs.15,000/-. Accordingly, the award of the tribunal is liable to be modified to that extent.

10. The Tribunal added 40% future prospects to the income, deducted 1/3rd towards personal expenses and applied multiplier 18.

11. Learned counsel for the claimants submits that the Tribunal ought to have added 50% Future Prospects as the deceased was a salaried employee. Learned counsel for the appellant/Insurance Company contends that the deceased was not a permanent employee as the nature of job shows that he was temporarily engaged on daily wages, therefore, 40% future prospects added by the Tribunal is found appropriate which needs no change.

12. The appellant/Insurer further submits that the deceased was unmarried at the time of accident, therefore, one-half deduction towards personal expenses should have been made instead the Tribunal has granted 1/3rd which cannot be sustainable. However, since the deceased was bachelor and the claimants are father and grand-parents, one-half should have been deducted instead of 1/3rd.

13. The Tribunal has further awarded a total sum of Rs. 70,000/- under the other conventional heads like loss of consortium (Rs.40,000); loss of estate (Rs.15,000) and funeral expenses (Rs.15000) which appear to be meagre in view the principle of the 10% automatic enhancement for every three years.

14. Under Motor Accident Claims, the Supreme Court has established that every individual claimant is entitled to a separate compensation for the loss of consortium or love and affection. There are 3 claimants in this case. Thus each claimant is entitled to Rs.44,000/- separately and the total comes to Rs.1,32,000/-- under this specific head.

15. In the light of the aforesaid discussion and in view of the decisions of the Supreme Court rendered in *National Insurance Company Ltd. Versus Pranay Sethi (2017) 16 SCC 680*; *Sarla Verma Vs. Delhi Transport Corporation (2009) 6 SCC 121* and *Magma General Insurance Co. Ltd. Versus Nanu Ram @ Chuhru Ram (2018) 18 SCC 130*, this Court is computing the compensation as below :

Sl.No.	**Heads**	**Compensation awarded by the Tribunal**	**Compensation awarded by this Court**
1.	Total loss of dependency	**30,24,000/-**	Rs. **13,000 X 12** = **1,56,000** plus Future Prospectus- **40%** i.e., **62,400** = **2,18,400** minus one-half deduction of personal expenses i.e.**1,09,200 = 1,09,200 x 18** multiplier = **19,65,600/-**
2.	Loss of estate	**15,000/-**	**16,500/-**
3.	Funeral expenses	**15,000/-**	**16,500/-**
4.	Loss of consortium	**40,000/-**	(44,000 x 3) **1,32,000/-**
		30,94,000/-	**21,30,600/-**

16. In view of the aforesaid analysis, the respondents 1 to 3 are held entitled for Rs. **21,30,600/-** and not Rs.30,94,000/- awarded by the Tribunal. Rest of the conditions of the impugned award shall remain intact.

17. In the result, the appeal filed by the Insurance Company is **allowed in part** and the cross-objections filed by the claimants stand disposed off. The impugned award is modified to the extent as indicated hereinabove.

Sd/-

Sanjay Kumar Jaiswal
Judge

Rao

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