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2025:CGHC:38264

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 388 of 2024

1 - Smt. Kalindri Yadav W/o Late Mahesh Yadav, Aged About 35 Years Caste Yadav, Resident Of Ratnabandha, Dhamtari, Tahsil And District-Dhamtari (CG)

2 - Shalendra D/o Late Mahesh Yadav, Aged About 14 Years Minor, Presented Through Their Legal Heirs Mother Smt. Kalindri Yadav W/o Late Mahesh Yadav Aged About 35 Years, Caste Yadav, Resident Of Ratnabandha, Dhamtari, Tahsil And District-Dhamtari (CG)

3 - Deman S/o Late Mahesh Yadav, Aged About 6 Years Minor, Presented Through Their Legal Heirs Mother Smt. Kalindri Yadav W/o Late Mahesh Yadav Aged About 35 Years, Caste Yadav, Resident Of Ratnabandha, Dhamtari, Tahsil And District-Dhamtari (CG)

4 - Kumari Jagriti D/o Late Mahesh Yadav, Aged About 3 Years Minor, Presented Through Their Legal Heirs Mother Smt. Kalindri Yadav W/o Late Mahesh Yadav Aged About 35 Years, Caste Yadav, Resident Of Ratnabandha, Dhamtari, Tahsil And District-Dhamtari (CG)

...Appellants

versus

1 - Kishan Lal Tamboli S/o Late Lalram @ Santosh Tamboli, Aged About 51 Years Resident Of New Market Bacheli, P.S. And Tahsil Bacheli, District-

Dantewada Chhattisgarh (Driver Of Offending Vehicle Truck Bearing Registration No. C.G.18 H 1122)

2 - Krishna Kumar Kesharwani Bhai Lal Kesharwani, Aged About 57 Years Resident Of New Market Bacheli, P.S. And Tahsil Bacheli, District Dantewada, Chhattisgarh. (Owner Of Offending Vehicle Truck Bearing Registration No. C.G.18 H 1122)

3 - Insurance Company, The New India Insurance Company Second Floor L.I.C., Building Jeevan Beema Marg, Pandri, Raipur, District Raipur, Chhattisgarh (Insurer Of Offending Vehicle Truck Bearing Registration No. C.G. 18 H 1122)

4 - Fulkunwar W/o Late Punit Yadav, Aged About 65 Years Caste Yadav, Resident Of Ratnabandha, Dhamtari, Tahsil And District Dhamtari, Chhattisgarh.

... Respondents

For Appellants : Mrs. Dhaneshwari Patel, Advocate

For Respondent no. 1 : Mr. Divyanand Patel, Advocate

For Respondent no. 2 : None, though served

For Respondent no. 3 : Mr. Sudhir Agrawal, Advocate

For Respondent no. 4 : Ms. Ruchi Sahu, Advocate appears on behalf of Mr. Ravipal Maheshwari, Advocate

(Hon'ble Shri Justice Parth Prateem Sahu)

Judgment on Board

04/08/2025

- 1) Heard on IA No. 01/2024, an application for condonation of delay in filing of this appeal.

- 2) On due consideration and submission made by counsel for the respective parties, IA No. 01/2024 is allowed.
- 3) Delay of 09 days in filing of this appeal is hereby condoned.
- 4) With the consent of parties, case is heard finally.
- 5) Appellants-claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "Act of 1988") seeking enhancement of amount of compensation, challenging the award dated 31.10.2023 passed by Learned Additional Motor Accident Claims Tribunal, Dhamtari, Chhattisgarh (for short "Claims Tribunal") in Claim Case No. 192/2021, whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act, 1988 in part and awarded total sum of ₹ 15,82,500/- as compensation in motor accidental death case with interest @ 6% p.a. from the date of filing of claim application till its realization.
- 6) As this appeal is filed by claimants-appellants seeking enhancement of amount of compensation, no disputed facts is involved in this case, therefore, this Court deems it proper not to advert into the facts as pleaded by claimants-appellants and respondents before the Claims Tribunal and is also forming part of the impugned order but is only considering and dealing with the arguments as raised by learned counsel for the respective parties upon enhancement of compensation amount only.
- 7) Learned counsel for appellants-claimants would submit that the claimants in specific terms has pleaded age of the deceased as 47 years. He used to work as a goods loader in heavy goods vehicle and was earning Rs. 1,000/- to Rs. 2,000/- per day. However, learned Claims Tribunal has assessed monthly income of deceased as Rs.

9,200/- considering that the incident occurred on 08.07.2021 and the place of incident was village – Makartola, District- Balod, Chhattisgarh which falls under ‘C’ Zone and wage fixed by the Competent Authority under the Minimum Wages Act, 1948 was Rs. 9,200/- per month which is erroneous. However, she further submits that the Claims Tribunal has awarded 25% of the assessed income towards future prospect, deducted 1/4th towards personal expenses and applied multiplier of 13 which is appropriate. Claims Tribunal further awarded compensation under the head of loss of consortium, funeral expenses and loss of estate. Lastly, she submits that the only ground for enhancement of compensation amount is with regard to not assessing income of the deceased appropriately. Hence, she prays the amount of compensation awarded by the Claims Tribunal be enhanced suitably.

- 8) Learned counsel for respective respondents opposes the submission of learned counsel for appellants-claimants and would submit that the claimants-appellants have failed to prove income of the deceased as pleaded in the claim application in accordance with law and, therefore, the income as determined by the Claims Tribunal in the facts of the case is just and proper and it does not call for any interference. In absence of prove of income, Claims Tribunal justified in assessing the income on notional basis.
- 9) I have heard learned counsel for the parties and also perused the record of claim case.
- 10) The sole ground raised by learned counsel for the appellants-claimants is that Claims Tribunal has not assessed income of the deceased appropriately. To appreciate the submission made by

counsel for the appellants-claimants, pleadings in claim application and evidence placed on record is perused.

11) In the pleadings made in claim application, though it is mentioned that deceased used to work as a loader and from that he was earning Rs. 1,000/- to Rs. 2,000/- per day. In support of this Vikas Sonwani (PW-03) was examined. Vikas Sonwani (PW-03) is supplier of building material. He in his examination-in-chief stated that the deceased was working under him as a loader. However, he failed to produce any admissible evidence such as any document mentioning payment to deceased or any register maintained by him. In the aforementioned facts of the case and evidence available on record, learned Claims Tribunal justified in assessing income of the deceased notionally. However, Claims Tribunal erred in assessing income of the deceased as Rs. 9,200/- only. In absence of any proof of income of deceased, Claims Tribunal is required to take into consideration the factors like wage structure prevailing in the place where the deceased was residing, date of accident, cost of living, price index and minimum wages fixed by the Competent Authority under Minimum Wages Act, 1948. As there is no suggestive evidence to show the wage rate prevailing at the place where deceased resides, I find it appropriate to take into account the minimum wages fixed by the Competent Authority, notified for the period from 01.04.2021 to 30.09.2021, wherein income of an unskilled laborer of 'B' Zone area is mentioned as Rs. 9,466/-. From the evidence placed on record, it is evident that deceased was resident of Dhamtari, Chhattisgarh which falls under the B-Zone area as notified by the Competent Authority in the notification of minimum wages published for aforementioned period, therefore, I find it

appropriate to determine income of deceased as Rs. 9,460/- per month. It is ordered accordingly.

- 12) As per the pleadings in claim application, deceased was aged between 40-50 years, learned Claims Tribunal has rightly applied addition of 25% of assessed income towards future prospect, rightly deducted 1/4th and applied a multiplier of 13 which is in tune with Hon'ble Supreme Court in case of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. Reported in 2009 6 SCC 121.** Claims Tribunal has further awarded Rs. 40,000/- towards loss of consortium to claimant no. 2 to 4 and Rs. 44,000/- to claimant no. 1. Further Rs. 16,500/- each has been awarded by Claims Tribunal under the head of loss of estate and funeral expenses by increasing 10% as held by Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi & ors,** reported in **(2017) 16 SCC 680.**
- 13) In the aforementioned facts of the case, considering increase of 10% in other conventional heads the amount of compensation under head of consortium to claimants no. 2 to 4 is also to be increased to 10%, accordingly. Claimant no. 2 to 4 will be entitled for compensation under the head of consortium and is awarded Rs. 44,000/- each.
- 14) For the foregoing discussion, the amount of compensation to be awarded to appellants-claimants requires re-computation, which is as under:-

Particulars	Compensation
- Annual Loss of income/ dependency = Rs. 1,13,520/- (Rs. 9,460/- x 12) - Addition towards loss of future prospects @ 25% (Rs. 1,13,520/- + 25% of	Rs.13,83,525

Rs.1,13,520/- = Rs.1,41,900/-) - Deduction of 1/4 towards personal and living expenses (Rs. 1,41,900 x 1/4= Rs. 35,475/-); - Rs. 1,41,900 – Rs. 35,475 = Rs. 1,06,425/- - Multiplier of 13 Rs. 1,06,425 x 13 = Rs. 13,83,525/-	
Loss of Spousal Consortium to Appellant No. 1	Rs. 44,000/-
Loss of parental consortium to Appellants No. 2 to 4 (Rs. 44,000/- each)	Rs. 1,32,000/-
Loss of estate	Rs. 16,500/-
Funeral Expenses	Rs. 16,500/-
Total	Rs.15,92,525

Now the appellants/claimants shall be entitled for total sum of compensation of **Rs. 15,92,525/-** instead of Rs.15,82,500/- as awarded by learned Claims Tribunal. The amount of compensation shall carry simple interest @ 8% p.a. from the date of filing of claim application till its realization.

- Any amount paid to the appellants-claimants pursuant to the impugned award shall be adjusted from the amount of compensation as calculated above. Rest of the conditions as imposed by the Claims Tribunal in the impugned award shall remain intact.

15) In the result, appeal is allowed in part and the impugned award is modified to the extent as indicated herein-above. *sd/-*

(Parth Prateem Sahu)

JUDGE