



2025:CGHC:38537



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1015 of 2018

ICICI Lombard General Insurance Company Limited Through Its Legal Manager, Vanijya Bhawan, Ground Floor, Devendra Nagar Raipur Chhattisgarh. (Insurer)

... Appellant

versus

1 - Meena Taram W/o Late Suresh Kumar Taram, Aged About 34 Years R/o Bangalpara Ward, Narayanpur, District Narayanpur Chhattisgarh.

2 - Om Kumar S/o Late Suresh Kumar Taram, Aged About 2 Years Minor Represented Mother Smt. Meena Taram), R/o Bangalpara Ward, Narayanpur, District Narayanpur Chhattisgarh.

3 - Gitesh Kumar S/o Late Suresh Kumar Taram, Aged About 8 Years Minor Represented Mother Smt. Meena Taram), R/o Bangalpara Ward, Narayanpur, District Narayanpur Chhattisgarh.

4 - Smt. Somari Bai W/o Late Rajuram Taram, Aged About 59 Years R/o Bangalpara Ward, Narayanpur, District Narayanpur Chhattisgarh. (Claimants)

5 - Hemant Patel S/o Banshidhar Patel, Aged About 32 Years R/o Timarlaga, Tahsil Sarangarh, District Raigarh Chhattisgarh. (Driver)

6 - Banshidhar Patel S/o Late Pancharam Patel, Aged About 52 Years R/o Timarlaga, Tahsil Sarangarh, District Raigarh Chhattisgarh. (Owner).

... Respondents

(Cause-title taken from Case Information System)



For Appellant	:	Mr. Sourabh Sharma, Advocate
For Respondents No.1 to 4	:	Mr. Vaibhav A. Goverdhan, Advocate
For Respondents No.5 and 6	:	Mr. S.P. Sahu, Advocate

Hon'ble Shri Amitendra Kishore Prasad, Judge
Judgment on Board

04.08.2025

1. Challenge in this appeal is to the award dated 29.07.2017 passed by the learned Motor Accident Claims Tribunal, Kondagaon, District Kondagaon (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.08/2017 whereby learned Claims Tribunal allowed claim application in part of the claimants.
2. The claimants have filed cross-objection/cross-appeal with a delay of 19 days.
3. Considering the grounds mentioned in the application for condonation of delay in filing the cross objection/cross-appeal, the same is allowed. The delay of 19 days in filing the cross-appeal is hereby condoned.
4. Brief facts of this appeal, in a nutshell, are that, on 15.06.2016, at about 11.45 PM, respondent No. 5, Hemant Patel, was driving the Car bearing registration No.CG-13-C-6715 (for short, 'offending vehicle'), and dashed the motorcycle of the deceased, Suresh Kumar, from behind. As a result of the said accident, the deceased sustained grievous injuries which led to his death.



5. The claimants being wife, children and mother of the deceased Suresh Kumar filed claim petition pleading therein that on the date of accident, the deceased was aged about 35 years and was working as a Peon in the office of the Executive Engineer, Sub-Division, Narayanpur, earning a monthly salary of Rs.14,637/- and under various heads, the claimants have claimed a total compensation of Rs.32,35,948/- to the non-applicants therein.
6. Respondents No.5 and 6/non-applicants No. 1 and 2 were filed their written statement and denied the fact of accident. They have pleaded that the accident occurred due to rash and negligent driving of deceased himself. It has been further pleaded that there was non-joinder of necessary party as the insurer of the motorcycle has not been impleaded as party non-applicants before the learned Claims Tribunal as well as on the date of accident, the offending vehicle was duly insured with the Insurance Company, as such, the liability, if any would be upon the Insurance Company.
7. The appellant/non-applicant No.3 was proceeded ex-parte before the learned Claims Tribunal.
8. On appreciation of pleadings, oral and documentary evidence brought on record by the respective parties, Claims Tribunal held that the deceased was aged about 35 years on the date of accident and earning Rs.13,186/- per month. While adding 35% towards future prospects and after applying the multiplier of 15,



awarded an amount of Rs.32,04,180/- towards loss of dependency.

Learned Claims Tribunal has further awarded Rs.2,05,000/- towards other conventional heads, as such awarded total compensation of Rs.34,09,180/- to the claimants with interest @ 9% per annum from the date of filing of the claim application till its realization and fastened the liability to pay the amount of compensation upon the driver, owner and Insurance Company of the offending vehicle.

9. Learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal has erred in fastening the liability upon the Insurance Company without properly appreciating the facts and evidence on record. It is contended that the accident occurred solely due to the rash and negligent driving of the deceased himself, who failed to observe traffic discipline while riding the motorcycle at a late hour. It is further submitted that there was a clear breach of policy conditions by the insured, and the driver of the offending vehicle did not possess a valid and effective driving licence at the time of the accident. Despite this, the Claims Tribunal has arbitrarily saddled the Insurance Company with the liability to pay compensation, which is contrary to settled principles of law. The learned counsel also submits that the compensation awarded under various heads is on the higher side and without proper basis or justification. In particular, the income of the deceased has been accepted merely on the basis of a salary slip, without examining the issuing authority or producing



corroborative evidence regarding his employment. As such, the impugned award be set aside or suitably modified, and the liability, if any, be shifted to the owner of the vehicle.

10. On the other hand, learned counsel appearing for the claimants/respondents No.1 to 4 submits that the impugned award passed by the learned Claims Tribunal is on the lower side and therefore warrants interference by this Court. It is respectfully submitted that the compensation awarded is not commensurate with the evidence on record and the settled principles of law laid down by the Hon'ble Supreme Court. Although the learned Claims Tribunal rightly assessed the age of the deceased as 35 years at the time of the accident, it has erred in applying the multiplier of 15. As per the judgment of the Hon'ble Supreme Court in ***Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121***, the appropriate multiplier for the age group of 31–35 years is 16, and the same ought to have been applied in the present case. It has been argued that the Claims Tribunal has further committed a grave error in computing the compensation by taking into account the net income of the deceased at Rs.13,186/- per month, whereas the gross salary of the deceased was Rs.14,637/- per month, which needs to be taken into consideration in view of the judgment rendered by the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. v. Indira Shrivastava and others, (2008) 2 SCC 763***. It is a settled principle that for computing compensation, gross income



has to be considered, and the deduction of statutory components such as PF and taxes is not permissible while computing loss of dependency. The deceased was a permanent employee working as a Peon in the office of the Executive Engineer, Sub-Division, Narayanpur, and was aged below 40 years. Therefore, the learned Tribunal has also erred in awarding only 35% towards future prospects, whereas, in view of the law laid down in ***National Insurance Company Limited v. Pranay Sethi and Others, (2017) 16 SCC 680***, 50% of the actual salary ought to have been added towards future prospects in the case of a permanent employee below 40 years of age. It has been further argued that the Claims Tribunal has also failed to award just and reasonable compensation under the conventional heads. It is submitted that under the head of loss of consortium, the claimants are entitled to Rs.1,00,000/- each, but the Tribunal has awarded a lesser sum without any justification, which is contrary to the guidelines laid down in ***Pranay Sethi*** (supra). It is further submitted that the Hon'ble Supreme Court, in ***United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur, (2020) 11 SCC 1***, has held that an amount under conventional heads should be increased by 10% every three years to keep pace with inflation. The learned Claims Tribunal, however, overlooked this well-settled principle and awarded amounts under conventional heads without applying the mandated escalation. As such, the cross-appeal filed by the



claimants be allowed and the amount of compensation be enhanced suitably.

11. Learned counsel appearing for respondents No.5 and 6 submits that on appreciating the pleadings and contentions of the claim petition, the learned Claims Tribunal has rightly passed the impugned award, which does not call for any interference.
12. I have heard learned counsel for the parties and perused the record of the claim case carefully.
13. The Supreme Court in the matter of **Indira Srivastava** (supra) has considered the income of the deceased for the purposes of awarding compensation and held as under :-

“9. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

10. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that



the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.....

17. This Court in Asha v. United India Insurance Co. Ltd., (2008) 2 SCC 774 did not address itself the questions raised before us. It does not appear that any precedent was noticed nor the term 'just compensation' was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax. What would be 'just compensation' must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-package is what the dependents have lost due to death of



the deceased. It is in the nature of compensation for future loss towards the family income.

19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.”

14. Reverting to the case in hand, the salary slip (Exhibit P-8) shows that the gross income of the deceased as Rs.14,637/- per month and as such, the Claims Tribunal has certainly erred in considering the net salary of the deceased for the purpose of computation of compensation in the light of judgment rendered by the Hon'ble Supreme Court in **Indira Shrivastava** (supra).
15. Looking to the future prospects available for any of the persons died in accident on account of raising their income for one or the other reason, the Hon'ble Supreme Court in the matter of **Pranay Sethi** (supra), has held that the dependents of the deceased will also be entitled for the benefit of such increase of amount of monthly income as future prospects, which reads as follows:-



“61. (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.”

16. In view of the facts and circumstances of the case, on the date of accident, the deceased was aged about 35 years, therefore, in view of the law laid down by the Hon'ble Supreme Court in the matter of **Pranay Sethi** (*supra*), the claimants are also entitled for the additional amount of 50% of the last drawn salary towards future prospects.
17. The Claims Tribunal has further erred in applying the multiplier of 15, inasmuch as, the deceased was aged about 35 years at the time of accident and the Supreme Court in the case of **Sarla Verma (Smt.)** (*supra*), has prescribed the multiplier of 16 for the age group between 30 to 35 years.
18. The learned Claims Tribunal has further committed an error by not deducting any amount towards personal and living expenses, despite having held in paragraph 15 of the impugned award that 1/4th of the income was to be deducted under this head, in view of



the ruling rendered by the Hon'ble Supreme Court in **Sarla Verma (Smt.) (supra)**. However, while computing the compensation, this deduction was not actually made.

19. Further, the scope of 'consortium' has been subsequently explained by the Apex Court in **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram & Others, (2018) 18 SCC 130**. It can be of three types; **Parental consortium** (payable to children because of the death of parents); **Spousal consortium** (payable to the surviving spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). This being the position, the claimants are entitled to get a sum of Rs.1,20,000/- towards loss of consortium. Further, a sum of Rs.15,000/- is payable towards funeral expenses in view of the law declared in **Pranay Sethi** (supra). As per the decision rendered in **Pranay Sethi** (supra), the appellants/claimants are also entitled to get a sum of Rs.15,000/- towards loss of estate. Further, 10% enhancement in every three years is also required to be given in respect of loss of estate, funeral expenses and loss of consortium in view of the judgment rendered by the Hon'ble Supreme Court in **Satinder Kaur @ Satwinder Kaur** (supra).
20. On the basis of above recalculation, the claimants i.e. wife, children and mother of the deceased, are entitled for compensation in the following manner:-



Sl. No.	Head	Calculation	Awarded amount
1.	Income of deceased @ Rs.14,637/- per month	Rs.1,75,644/- per annum	
2.	50% of (1) above to be added as future prospects	1,75,644 + 87,822 = Rs.2,63,466/-	
3.	1/4th of (2) deducted as personal expenses of the deceased	2,63,466 / 4 = Rs.65,866.5 (rounded of Rs.65,867/-) = Rs.1,97,600	
4.	Compensation after multiplier of 16 applied	1,97,600 x 16	Rs.31,61,600/-
5.	Towards loss of estate	15,000 + 3,000 with increase of 10% in every three years	Rs.18,000/-
6.	Towards loss of consortium to all the four claimants @ Rs. 40,000/-	40,000 + 8,000 = 48,000/- with increase of 10% in every three years	Rs.1,92,000/-
7.	Funeral Expenses	15,000 + 3,000 with increase of 10% in every three years	Rs.18,000/-
		Total Compensation Awarded	Rs.33,89,600/-

21. In the said circumstance, the total compensation comes to **Rs.33,89,600/-**. As such, the amount awarded by the Claims Tribunal is reduced by Rs.19,580/- and the claimants shall get total compensation of Rs.33,89,600/- (34,09,180 – 33,89,600)



along with interest @ 9% per annum on the total amount of compensation with effect from the date of filing the claim application till its realization. The amount already deposited under the impugned award shall be adjustable.

- 22.** In the result, the appeal filed by the Insurance Company as well as cross-appeal filed by the claimants are **allowed in part**. The impugned award is modified to the extent indicated above and rest thereof shall remain intact.
- 23.** Since it is an admitted fact that on the date of accident, the offending vehicle was insured with the Insurance Company, the Insurance Company is directed to pay the amount of compensation to the claimants as modified by this Court within a period of 60 days from the date of production of certified copy of this judgment.
- 24.** Record of the concerned Motor Accident Claims Tribunal be sent.

Sd/-

(Amitendra Kishore Prasad)
Judge