**(2024) 03 CHH CK 0027**

**In the Chhattisgarh High Court**

**Case No :** MAC No. 1291 Of 2019

Chhoti Rao APPELLANT

Vs

Ramgilas Kaiwartya RESPONDENT

**Date of Decision :** 12-03-2024

**Acts Referred:**

Motor Vehicle Act, 1988 — Section 173

**Citation :** (2024) 03 CHH CK 0027

**Hon'ble Judges :** Sachin Singh Rajput, J

**Bench :** Single Bench

**Advocate :** Deepak Jain, Harshmander Rastogi, N. K. Thakur

**Final Decision :** Partly Allowed

## Judgement

1) This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short MV Act) has been filed by the appellants/claimants being aggrieved by the award dated 17.05.2019 passed by the II Additional Motor Accident Claims Tribunal Baloda Bazar, District- Baloda Bazar - Bhatapara, (CG) in Claim Case No. 40/2018.

2) By the impugned award, the learned Tribunal has awarded compensation of Rs. 09,88,000/- to the appellants/claimants, on account of the death of deceased/ Goverdhan Rao in an accident that took place on 12.12.2017 by rash and negligent driving of the offending vehicle (Bulker Capsule) bearing Registration No. C.G.-07-BJ-2984, driven by driver/respondent No.1- Ramgilas Kaiwartya, Owned by respondent No. 2/Malkit Singh, insured with the respondent No. 3/ H.D.F.C. Agro General Insurance Co. Ltd. As a result of the said accident, the deceased/Goverdhan Rao sustained severe injuries, due to which he died.

3) As per the pleadings, the deceased/Goverdhan Rao was aged about 28 years old and used to sell Bhel & Gup-Chup and was earning Rs. 800/- per day. The appellants/claimants were dependent upon the income of the deceased.

4) Respondent No. 1 & 2/Driver and owner field their written statement and

denied the averments of the claim application. Respondent No.3/Insurance company in usual course, denied the averments of the claim application and pleaded that the driver of the offending vehicle did not have valid and effective driving licence and there is a violation of terms and conditions of insurance policy.

5) On the basis of the above pleadings, the learned Tribunal has framed 5 issues and after appreciating the material available on record decided the same in favour of the appellants/claimants and awarded above stated compensation.

6) Mr. Deepak Jain, learned counsel for the appellants/claimants submits that the deceased/Goverdhan Rao was aged about 28 years old and used to sell Bhel & Gup-Chup and was earning Rs. 800/- per day, whereas the learned Tribunal assessed the monthly income of the deceased/Goverdhan Rao to Rs. 6,000/-. Alternatively, he submits that looking to the date of accident, atleast minimum wages should have been taken for assessment of compensation and amount on other heads is also on the lower side. Hence, suitable enhancement may be made by this Court.

7) Mr. Harshmander Rastogi, learned counsel for the respondent No.3. submits that no documents with regard to age, profession and income of the deceased/ Goverdhan Rao were placed on record, therefore, in view of evidence available on record and findings of the learned Tribunal is justified and just compensation has been awarded.

8) I have heard learned counsel for the parties, considered their rival submissions and perused the records.

9) Barring the oral evidence of the appellants/claimants, no documentary evidence with regard to profession/income of the deceased/Goverdhan Rao has been filed. However, considering the evidence available on record, number of dependents; age of the deceased; date of accident; nature of job & minimum wages prevailing at that time and there are widow and 2 minor daughters, mother and two siblings, this Court is of the view that Rs. 9,000/- can be safely taken as income of the deceased.

10) In light of the above and taking guidance from the judgment of Hon?ble Supreme Court in the matter of National Insurance Company Ltd. V. Pranay Sethi and others; (2017) 16 SCC 680, Sarla Verma & Ors. Vs. Delhi Transport Corporation & Ors; (2009) 6 SCC 121 and Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors; (2018) 18 SCC 130, this Court is recomputing the compensation as below:-

S.N

Particular

Awarded by this Court

1.

 

Monthly Income of the deceased

9,000/-

2.

Future Prospects @ 40%

3,600/-

3.

Total Income

12,600/-

4.

Total Yearly Income

12,600X12= 1,51,200/-

5.

Personal expenditure (1/4)

1,51,200/4= 37,800/-

6.

Net Income

1,51,200- 37,800=01,13,400/-

7.

Multiplier of 17 applied to assess total loss of dependency

01,13,400X17= 19,27,800/-

8.

Funeral Expenses

15,000/-

9.

Loss of estate

15,000/-

10.

Spousal Consortium

40,000/-

11.

Filial & Parental Consortium

1,20,000/-(40,000/-each to A2 to A4)

Total compensation

21,17,800/-

12) For the forgoing reasons, the appeal is allowed in part. The amount of compensation of Rs. 09,88,000/- awarded by the Tribunal is enhanced to Rs. 21,17,800/-. Hence, after deducting the amount of Rs. 09,88,000/-, the claimants are held entitled for an additional amount of Rs. 11,29,800/-. The additional amount shall carry interest @6% per annum from the date of this appeal i.e. 08.07.2019. The impugned award stands modified to the above extent.

13) The insurance company is directed to deposit the amount of compensation enhanced by this Court within a period of 60 days from today, on such deposit being made, Rs. 02,00,000/- shall be deposited in the name of appellant/ claimant No. 1/Smt. Chhoti Rao for a period of 3 years in FDR at any Nationalized Bank, Rs. 03,00,000/- each shall be invested in the name of appellant/claimant Nos. 2 & 3/Minor Subhi Rao & Minor Vashu Rao till they attain majority as FDR in a Nationalized Bank, Rs. 02,00,000/- shall be deposited in the name of appellant/claimant No. 4/Smt. Kamla Bai, Rs. 50,000/- each shall be invested in the name of appellant/claimant Nos. 5 & 6/Durgesh Rao & Minor Ku. Durgeshwari Rao for a period of two years as FDR in a Nationalized Bank, remaining amount shall be paid to appellant/claimant No.1/Smt. Chhoti Rao through bank transaction/account payee cheque.

14) Consequently, the appeal is partly allowed.

 