

---

**(2009) 04 JH CK 0124**  
**In the Jharkhand High Court**  
**Case No : M.A. No. 82 of 2008**

Malti Mahato and Others

APPELLANT

Vs

Sanjay Kumar Dey and Another

RESPONDENT

---

**Date of Decision :** 28-04-2009

**Acts Referred:**

**Citation :** (2009) 57 BLJR 2416

**Hon'ble Judges :** M.Y. Eqbal, J;Jaya Roy, J

**Bench :** Division Bench

**Advocate :** Amit Kumar Das, for the Appellant; Alok Lal, for the Respondent

**Final Decision :** Allowed

---

## Judgement

1. Heard the learned Counsel appearing for the parties.
2. This appeal by the claimants-appellants is for enhancement of compensation awarded by the Motor Accident Claims Tribunal Saraikeila in Compensation Case No. 44 of 2003. The claimants, who are the widow and two minor sons, filed Compensation case for grant of compensation to the tune of Rs. 3,00,000/- for the death of deceased, Surendra Mahto, who died in a motor vehicle accident.
3. The undisputed facts are that on 25.09.2002 the deceased boarded the bus for going to Adityapur to attend his job. But due of rash and negligent driving of the bus the accident took place and the deceased died. According to the claimants the deceased was 30 years old but according to the Post Mortem report the age of the deceased was 32 years. The Tribunal taking the notional income assessed compensation at Rs. 1,77,000/-. For better appreciation the reason assigned by the Tribunal for taking the notional income is reproduced herein below:

Now the question arises what should be the quantum of compensation. P.M.R. shows that the age of the deceased 32 years at the time of accident. Though applicants have mentioned in their petition the age of the deceased was 30 years

but in support of it no documentary evidence has been produced, so I am bound to accept the age of the deceased was 32 years which has been mentioned in the P.M.R. as that has been estimated by qualified doctor. The applicants have mentioned that income of the deceased was Rs. 2500/- p.m. The witnesses have deposed that deceased was working as Assist. Machine Operator and his earning was Rs. 2500/- p.m. but no documentary evidence in support of the income of the deceased has been filed. It is settled principle that when no document has been produced regarding the income of the deceased then Court should commute the compensation amount on the basis of notional Income given in Schedule II of the M.V. Act. Hence it is held that annual income of deceased was Rs. 15000/- p.a. at the time of his death. In the result, it is hereby

#### ORDERED/AWARDED

that the present compensation case is allowed in part on contest. Accordingly, the applicants shall be entitled to compensation in present case as shown below:

Annual income

Rs. 15,000/-

1/3 amount is deducted for the personal expenses

Rs. - Rs. 5000/-

=Rs. 10,000/-

17 multiplier (age group 30-35)s.

(10,000 x 17)

=Rs. 1,70,000/-

Funeral expenses

+Rs. 2000/-

=Rs. 1,72,000/-

Loss of consortium

+Rs. 5000/-

=Rs. 1,77,000/-

Interim compensation has already paid"

=Rs, 50,000/-

=Rs. 1,27,000/-

4. Firstly the Tribunal has committed serious error of law in holding that in absence of any documentary evidence notional income has to be taken. The Tribunal has further committed error of law in holding that "it is settled principle

that when no document has been produced regarding the income of the deceased then the Court should compute the compensation amount on the basis of notional income." The correct law is that the notional income as provided in Schedule I appended to the Act is that when no evidence is led with regard to the income of the deceased and in case of death of a non-earning member the principle of notional income shall apply. Here in the instant case the evidence was led by the claimants' witnesses that the deceased was a Assistant Motor operator and his earning was Rs. 2500/- per month. No contradictory evidence has been adduced either by the owner or by the insurer of the bus. In that situation, the Tribunal had no option but to accept that the deceased was an earning member.

5. Applying the aforesaid principle, we accept the evidence adduced by the claimants that the deceased was earning Rs. 2500/- per month. If that monthly earning is taken into account, the annual dependency comes to Rs. 20,000/-. By taking minimum multiplier of 15 the net compensation amount comes to Rs. 3,00,000/-. However, we hold the aforesaid amount of Rs. 3,00,000/- as a lump sum amount inclusive of interest.

6. This appeal is, therefore, allowed and the amount of compensation is enhanced to Rs. 3,00,000/- inclusive of all interest. Needless to say that the Insurance Company shall pay the compensation amount minus the amount already paid to the claimants.