



13/02/09/09

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HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

**CORAM: HON'BLE SHRI RAJEEV GUPTA, C.J.
HON'BLE SHRI T.P. SHARMA, J.**

M.A (C).No.448 of 2007

**Appellants
Claimants**

- 1 Barsan Yadav, Age 60 years, S/o Shri Gosai Ram Yadav
- 2 Smt. Roopvati Yadav, Age 40 years W/o Shri Barsan Yadav
- 3 Ku.Parvati Yadav (Minor) Age 15 years D/o Late Bhojram Yadav
- 4 Omprakash Yadav, (Minor) Age 11 years S/o Late Bhojram Yadav
- 5 Mahesh Yadav (Minor) Age 09 years S/o Late Bhojram Yadav

Minor appellants No.3 to 5 are represented by the appellant No.01, Barsan Yadav

All the above are R/o Village - Memradhih, PS Pithora, Distt Mahasamund (CG)

VERSUS

**Respondents
Non-Applicants**

1. Lal Babu Chowarasiya, Age 35 years, S/o Devnarayan Chowrsiya C/o Bajaj Auto Ltd, Aowrangabad, Distt Aowrangabad (MH)

(Driver of the Truck No.CG04/G-4423)
2. M/s Super Sharma Transport, Near Vayas Talab, Beergao, Raipur, Tahsil & Distt Raipur (CG)

(Owner of the Truck No.CG 04/G-4423)
3. The New India Insurance Com. Ltd., Divisional Office at Madina Building, Jail Road, Raipur, Distt Raipur (CG)
(Ins. Com. of the Truck No.CG 04/G-4423)



**Memo of Misc. Appeal under Section 173 of the
Motor Vehicles Act**

Present : Shri J.A. Lohani, learned counsel for the appellants.
None for respondents No. 1 and 2.
Shri Dashrath Gupta, learned counsel for
respondent No.3.

ORDER

(31st August, 2009)

The following order of the Court was passed by
Rajeev Gupta, C.J.

Learned counsel for the parties are heard on I.A.
No.01/2007, a petition for condonation of the delay in filing the
appeal.

2) On due consideration of the submissions of learned
counsel for the appellants and the grounds taken in the petition,
we are satisfied that the appellants have succeeded in showing
sufficient cause for the delay in filing the appeal.

3) I.A.No.01/2007, therefore, is allowed and the delay in filing
the appeal is hereby condoned.

4) Shri J.A. Lohani, learned counsel for the appellants is
heard on admission.

5) The appellants are seeking enhancement of the
compensation awarded by the Second Additional Motor
Accidents Claims Tribunal, Mahasamund (for short 'the Tribunal')
vide award dated 28.09.2005, passed in Claim Case No.34/2005.

6) As against the compensation of Rs.28,80,000/- claimed
by the appellants/ claimants, unfortunate parents and minor



children of deceased Bhojram Yadav, by filing a claim petition under Section 166 of the Motor Vehicles Act, for his death in the motor accident on 13.02.2005, the Tribunal awarded a total sum of Rs.3,24,500/- as compensation along with interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

7) Shri J.A. Lohani, learned counsel for the appellants vehemently argued that the Tribunal has erred in not accepting the claimants' evidence about the income of the deceased and in assessing his income at Rs.2,500/- per month and Rs.30,000/- per annum; and in awarding low compensation of Rs.3,24,500/- only.

8) The claimants themselves pleaded that deceased Bhojram Yadav used to earn Rs.100/- per day as Mason. It was further submitted that in addition to his income as Mason, he was earning Rs.18,000/- per annum from agriculture. The claimants' witness AW-2 Balu categorically stated before the Tribunal that the deceased used to work only for eight months as Mason and was undertaking agricultural operations during the remaining four months. The Tribunal on the above evidence assessed the income of the deceased at 2,500/- per month and Rs.30,000/- per annum.

9) On due consideration, we do not find any infirmity in the assessment of the income of the deceased by the Tribunal.

(3)

10) The claimants' dependency also has been rightly assessed by the Tribunal by deducting the usual 1/3rd of the income of the deceased towards his personal expenses.

11) The multiplier of 16 selected by the Tribunal cannot be found fault with considering that the deceased was shown to be 38 years of age in the post mortem report and in view of the recent dictum of the Apex Court in the case of **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another**, reported in **(2009) 6 SCC -121**, wherein the multiplier of 15 only was prescribed for the age group between 36 – 40 years.

12) For the foregoing reasons, we do not find any scope for enhancement of the compensation awarded by the Tribunal.

13) The appeal filed by the appellants / claimants for enhancement of the compensation, therefore, is liable to be dismissed and is hereby dismissed summarily.

Sd/-
Chief Justice

Sd/-
T.P. Sharma
Judge

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