

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. NO. 589 /2004.

Division Bench

APPELLANTS

1. Parmeshwari, W/o. Shri Ramfal, aged about 34 years,
2. Satyavan, S/o. Ramfal, aged about 16 years,
3. Narendra Kumar, S/o. Ramfal, aged about 12 years,
4. Ku. Satyasheel, S/o. Ramfal, aged about 14 years

From No. 2 to 4 Minor, Mother-
Parmeshwari, W/o. Shri Ramfal

All are R/o. Gram-Konargath,
Distt. - Jajpur - Champa (C.G.)

VERSUS

RESPONDENTS

1. Biharilal, S/o. Matadin, aged about 32 years, R/o. Gram-Devikhurd Mod, P. S. - Totwa, District - Bilaspur (C.G.).

2. Balkam, S/o. Dayadas, aged about 26 years, R/o. Gram-Darighat, Masturi, Distt. - Bilaspur (C.G.).

3. Oriental Insurance Co., Bilaspur (C.G.)

MEMORANDUM OF APPEAL UNDER SECTION-173 OF THE MOTOR VEHICLES ACT-1988 FOR ENHANCEMENT OF THE COMPENSATION AMOUNT

Claim in sum	Rs. 25,00,000/-
Awarded by Tribunal	Rs. 1,94,000/-
Valued	Rs. 23,06,000/-

Being aggrieved by the Impugned Award dated 28/02/2004 passed in Claim Case No.11/2002 (Between Parmeshwari & Others Versus Biharilal & Others) passed by the Additional Motor Accident

P. R. No. 589 /2004
Presented by Shri. N. S. Nagari
dated 1.2.2004

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 512 of 2004

Oriental Insurance Company Ltd.

..... Appellant.

Versus

Parmeshwari & Others.

..... Respondents.

And

M.A. No. 589 of 2004

Parmeshwari & Others.

..... Appellants.

Versus

Biharilal & Others.

..... Respondents.

For Appellant/s : Shri Raj Awasthi & Smt. Renu Kochar, Advocates,
respectively.

For Respondents : None appears.

Hon'ble Shri Justice Goutam Bhaduri

JUDGMENT

20.03.2015

1. Both the appeals are being tried and decided together by this common order as they are arising out of the same accident and similar facts are involved.
2. The M.A.No.512/2004 is preferred by insurance company against the liability fastened on the company and the another M.A. No.589/2004 is by the claimants for enhancement of the award.
3. No representation is made on behalf of Biharilal & Baliram, owner & driver of the offending vehicle.

(24)

4. The brief facts of the case, as pleaded by the claimants, are that on 17.11.2001, the deceased Ramfal was traveling in a vehicle Metador bearing No.M.P-26/D-5500, going from Champa to Akaltara. The vehicle which was being driven by Baliram in a rash and negligent manner, met with an accident and turned turtle and thereby Ramfal died on the spot. The incident was reported to the police. It was stated that the deceased was working on the post of Peon in the Electricity Department and was getting a salary of Rs.8,281/- per month. The owner of the vehicle was Biharilal and the vehicle was being driven by Baliram and was insured with the Oriental Insurance Company.
5. The non-applicant Oriental Insurance Company refuted the claim and it was stated that the deceased was illegally traveling in the said offending vehicle and he was not authorised to travel in the vehicle and therefore, there was a breach of policy was committed. The owner and driver also refuted and denied the averments of the claim petition.
6. The learned Claims Tribunal after evaluating the entire evidence on record, as against the claim made of Rs.25,00,000/- passed an award of Rs.1,94,000/- and also fixed the liability on the insurance company. Therefore, the instant appeal by the claimants for enhancement and by the insurance company against the liability which is fastened over the insurance company.
7. Learned counsel appearing on behalf of the insurance company in appeal No.512/2004 would submit that in this case, according to the own admission of the claimants, the deceased was traveling as a gratuitous passenger in a commercial vehicle and therefore there was a breach of policy committed by the owner. Consequently, the liability cannot be fastened over the insurance company. He would refer to the statement of the claim petition and the report of the criminal case and stated that admittedly the deceased was traveling as a gratuitous passenger,

therefore, the liability cannot be fastened over the insurance company in view of such admission made.

8. Learned counsel appearing on behalf of the claimants in appeal No.589/2004 would submit that it was the duty of the insurance company to prove the fact that the deceased was traveling as a gratuitous passenger. It is submitted that the deceased was going to discharge of his official job and was traveling in the Metador which met with an accident and therefore it cannot be said that deceased was traveling as gratuitous passenger. It is further contended that such fact required to be proved by the insurance company. It is further submitted that the award passed by the Tribunal should also be enhanced accordingly as the Tribunal has failed to grant the just compensation to the claimants.
9. I have heard the learned counsel appearing for the appellants at length and perused the documents & evidence on record.
10. Firstly, the contention of the insurance company is dealt with as to whether the liability can be fastened over the insurance company.
11. Perusal of the claim petition would reveal that at para 2 of the claim petition, it is stated that on 17.11.2001, the deceased Ramfal was traveling in the offending vehicle Metador bearing No.M.P-26/D-5500 which met with an accident because of the rash and negligent driving of the driver Baliram. Because of the accident, the deceased Ramfal succumbed to the injuries. The driver of the offending vehicle Baliram who was examined as Non-applicant witness No.1 has stated that on 16.11.2001, he was coming with load of Ginger to Bilaspur, thereafter, he met with an accident. He has proved the document registration, fitness certificate, goods permit & insurance policy as Ex.NA-1, NA-2, NA-3 & NA-4 respectively. The document Ex.NA-3(c) is the permit granted for carrying the goods by the R.T.O. The certificate of insurance is marked as Ex.NA-4(c). Reading of such certificate would go to show that it was for

goods carrying commercial vehicle four wheeler. The liability covered in that was for the driver and the workman. Ex.NA-5 was the licence.

12. The claimant has also proved the document of criminal case i.e. FIR as Ex.A-3 and morgue intimation as Ex.A-4 and the statement of the witness in the criminal case. Reading of the statement and evidence and the policy along-with all averments of the claim petition, it would go to show that the deceased Ramfal boarded the ill-fated vehicle Metador while he was going for his official job and he took the lift in the vehicle which met with an accident.

13. The goods carriage vehicle has been defined in Section 2(14) of the Motor Vehicles Act, 1988, which reads as under :

Section 2(14). "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "good vehicle" in the old Act. The position becomes further clear because the expression used is "good carriage" is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act.

14. The similar proposition has been followed by this Court in **2015 (1) T.A.C. 112 (Chhattisgarh)** in between **Prakash Enterprises v. Sukaloram & Others** and 2015 (1) T.A.C. 201 (Chhattisgarh) in case of **National Insurance Company v. Mahendra Kumar @ Rajju & Others**. Therefore, in view of the same, it is found that there was a clear breach of policy of the insurance and the insurance company cannot be held liable

to make good the payment to the claimants. Consequently, the liability which has been fastened over the insurance company is set aside.

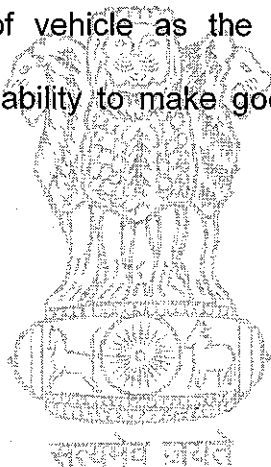
15. Now coming to the quantum which has been awarded by the claims Tribunal, admittedly, according to the PW-3, Chandrikalal Sahu and the wife of the deceased Ramfal namely Parmeshwari Sahu, the deceased Ramfal was working as Peon in the Electricity Department and he was getting a salary of Rs.8,281/- as per the salary slip which is proved as Ex.A-1. This fact has not been disputed that the salary slip was also been proved by the claimant wife which is corroborated by the claimants' witness. At the time of accident, the deceased was aged about 36 years as would be evident from Ex.A-7, the post mortem report. Further, the perusal of Ex.A-1 would reveal that the net salary which has been receivable by the deceased was Rs.5700/-. Therefore, taking into law laid down in a case of **Rajesh & Others v. Rajbir Singh & Others** reported in **(2013) 9 SCC 54**, the future prospects as has been reiterated that 30% has to be added over the income of the deceased. The claimants in this case were widow and three children therefore the deduction would be $\frac{1}{4}$ as has been laid down in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**, reported in **(2009) 6 SCC 121**. The age of the deceased was 36 years, consequently the multiplier of 16 would be applicable. Therefore, the income is reassessed as under :

S.No	Heads	Calculation
(i)	Salary	Rs.5700/- per month
(ii)	30% of (i) above to be added as future prospects	(Rs.5700 + Rs.1710) Rs.7410/- per month
(iii)	$\frac{1}{4}$ of (ii) deducted as personal expenses of the deceased as the number of dependents were 4.	(Rs.7410 – Rs.1852) Rs.5558/- per month.
(iv)	Compensation after multiplier of 16 is applied.	(Rs.5558 x 12 x 16) Rs.10,67,136/-
(vi)	Loss of consortium	Rs. 1,00,000/-

(vii)	Loss of care and guidance for 3 minor childrens.	Rs. 75,000/-
(ix)	Funeral expenses	Rs. 25,000/-
	Total compensation awarded	Rs. 12,67,136/-

16. After deducting Rs.1,94,000/- as awarded by the tribunal, the enhancement would be Rs. 10,73,136/-. The claimants will be entitled to Rs.10,73,136/- in addition what is already awarded. The enhanced amount will carry interest @ 9% from the date of filing of the petition till its realization.
17. In the result, both the appeals are allowed to the above extent. The claimants shall be entitled to recover the amount of compensation from the owner & driver of vehicle as the insurance company has been exonerated from the liability to make good the award. No order as to costs.

Ashok



Sd/-
Goutam Bhaduri
Judge