

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1192 of 2014

- 1. Jagdish s/o Gambhir Sai, aged about 50 years, occupation agriculture
- 2. Surendra Kumar, son of Jagdish, aged about 26 years, Occupation driver
- 3. Minor Narendra Kumar, Son of Jagdish, aged about 16 years,
- 4. Minor Ravikant, Son of Jagdish, aged about 14 years

Appellants 3 & 4 being minors represented through natural guardian Jagdish, appellant No.1.

All residents of village Devnagar, Police Station Surajpur, Tahsil Surajpur, Civil and Revenue District Surajpur

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Versus

- 1. Jugeshwar Kumar Kushwaha, son of Ramsakal Kushwaha, aged about 25 years, occupation agriculture, R/o village Ranai (Kushwahapara), Police Station Patna, Distt. Korea (C.G).
(Driver of the offending vehicle)
- 2. Vijendra Kumar Kushwaha, son of Narad Prasad Kushwaha, aged about 32 years, R/o village Sirsi Chowki Basdei, Police station Surajpur, Distt. Surajpur (C.G) *(Owner of the offending Vehicle)*
- 3. The National Insurance Company Limited, New Delhi, through Asha Automobiles Main Road, Surajpur, District Surajpur (C.G)

(Insurer of the Offending vehicle)

Respondents

For Appellants	:	Shri Pushpendra Kumar Patel, Advocate
:		
For Respondent No. 3	:	Shri Anil Gulati, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

31.07.2015

- 1. This is an appeal against the award dated 21.08.2014 passed in claim Case No.121/2013 by the Third Additional Motor Accidents Claims Tribunal, Surajpur, Distt. Surajpur (C.G) whereby the Tribunal has

partly allowed the claim petition by awarding Rs.2,63,000/- as against the total claim of Rs.15 lakhs..

- 2.** The claim petition was filed by the husband and 3 sons stating that that on 22.8.2013 that deceased Jirmen bai was coming back to her house after purchasing the goods. At that time, a hero Honda Motorcycle bearing Regn. No. C.G. 15-CN/1564 driven by original non-applicant No.1 Jugeshwar Kumar Kushwaha in rash and negligent manner dashed her and by such impact of accident, she died on the spot. It was stated that the deceased used to discharge house-hold duties and also used to work as a labour with head-mason and thereby she used to maintain her family members. It was stated that because of her death, the future of her minor children has become miserable.
- 3.** Non-applicants 1 & 2, driver and owner of the motorcycle bearing C.G.No.15-CN/1564 denied the averments of the claim petition. It was stated that the accident did not occur due to rash and negligent driving of the offending motorcycle and the death of deceased was caused due to accident met with by another vehicle. It was stated that non-applicant No.1 has wrongly been inculpated in this case. It was further stated that on the date of accident, the vehicle was insured with non applicant No.3 insurance Company, therefore, they are not liable to make good the payment of compensation.
- 4.** Non-applicant No.3 denied the averments and stated that the deceased was 60 years old lady and because of her age, she was not able to perform any job. It was further contended that at the time of accident, non-applicant No.1 was not having valid and effective driving license and thereby it led to breach of terms of policy.
- 5.** The Tribunal after evaluating the facts and evidence on record arrived at a finding that the motorcycle bearing No.C.G.15-C.N./1564 driven by non-applicant No.1 Jugeshwar rashly and negligently caused the

accident, as a result of which, Jerman Bai died in the said accident. It has further recorded a finding that at the time of accident, there has been no breach of insurance policy. The Tribunal has relied on the statement of eye witness Omprakash A.W.2 and the documents of criminal case and came to conclusion that at the time of accident, the offending vehicle i.e., the motorcycle was being driven in rash and negligent manner caused accident. The said finding has not been challenged by either of parties, therefore, in absence of any challenge to such finding, the same is affirmed.

6. Learned counsel for the appellant submits that the Tribunal has failed to grant just compensation to the claimants, therefore, the same should be suitably enhanced.
7. Per contra learned counsel for respondent No.3 submits that the award passed by the learned Tribunal is well merited which do not call for any interference by this Court.
8. I have heard learned counsel for the parties and have also perused the record.
9. The only question which falls for consideration as to whether the quantum of compensation has been correctly assessed or not.
10. Reading of the award would show that the Tribunal has assessed the income of deceased as Rs.3000/- per month thereby 36,000/- per year. Considering the averments made by Surendra Kumar A.W.1 on oath that deceased used to discharge the job of labour with head-mason (Rajmistry) and used to earn Rs.200/- per day which is further corroborated by the statement of A.W.2 Omprakash, the notional income as has been arrived at by the Tribunal @ Rs.3000/- per month appears to be just and proper in the given facts of this case. Further taking into the age and number of claimants, 1/4th was deducted and multiplier of 9 was adopted which also appears correct as per the

principles laid down in case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 6 SCC 121**. In addition, the Tribunal has awarded Rs.5000 for loss of estate, Rs.10000 for loss of consortium and Rs.5000/-for funeral expenses which in the opinion of this Court needs to be reassessed.

11. Taking into the age of deceased and the age of husband, the loss of consortium Rs.10,000/- appears to be too meagre which is enhanced to Rs.50,000/-. Further, no amount has been granted for loss of love and affection to 3 claimant children. Therefore, it would be fair to grant an amount of Rs.50,000/- for loss of love and affection to the children. The amount of Rs.5000 awarded for loss of estate is maintained whereas the amount of Rs.5000/- awarded for funeral expenses is enhanced to Rs.25,000/-. Thus the total compensation to be reassessed as follows:

S.No.	Heads	Calculation
(i)	Notional income as taken by the Tribunal	Rs.36,000/-
(ii)	One fourth of (ii) deducted as personal expenses of the deceased	Rs.36,000 - 9000 = 27,000/-
(iii)	Compensation after multiplier of 9 is applied	Rs.27,000 x 9 = Rs.2,43,000/-
(iv)	Loss of estate	Rs. 5,000/-
(v)	Loss of consortium	Rs. 50,000/-
(vi)	Loss of love and affection	Rs. 50,000/-
(vii)	Funeral expenses	Rs. 25,000/-
	Total	Rs.3,73,000/-

12. Thus, the total compensation will be Rs.3,73,000/- After deducting Rs.2,63,000/- awarded by the tribunal, the enhancement would be Rs. 1,10,000/-.

13. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 1,10,000/- in addition to what is already awarded.
14. Now coming to grant of interest, the Supreme Court in ***Asha Verman & others V. Maharaj Singh & others (supra)*** held in para 19 that the High Court has erred in awarding an interest at the rate of 8% per annum only, instead of 9% per annum on the compensation amount as per the principles laid down in case of ***Municipal Corporation of Delhi V. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481 : AIR 2012 SC 100***. Therefore, in the instant case, interest @ 9% per annum is awarded on the compensation amount from the date of filing of the application till the date of payment. The claimants are entitled to receive the said compensation from the Insurance Company. No order as to costs.
15. The Registry is further directed to communicate the claimants in writing the “amount of award enhanced in this appeal” as against the award made by the Tribunal. The said communication be made in Hindi Deonagari language.

Sd/-
GOUTAM BHADURI
JUDGE