

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. No. 1303 of 2004

1. Ashish Kumar Pandey, aged about 35 years, son of Shri V.N. Pandey, occupation – Transporter and Agriculturist, R/o. Sahdeo Nagar, Rajnandgaon, Tasil and District Rajnandgaon (C.G.).
2. Seikh Rafique, aged about 36 years, son of Seikh Rasool, Caste Musalmaan, occupation – driver, R/o. Raja Talab, Raipur, P.S. Civil Line, Raipur. Presently resident of Mohla, P.S. Mohla, behind Bus Stand, Khadgaon Road, Mohla, Tahsil Mohla, District Rajnandgaon (C.G.)

----Appellants

Versus

1. Smt. Shanti Bai, Wd/o. Late Chumman Das Sahu, aged about 35 years,
2. Ku. Nageshwari, D/o. Late Chumman Das Sahu, aged about 15 years (Minor).
3. Chokes, S/o. Late Chumman Das Sahu, aged about 13 years (Minor).
4. Ku. Shashikala, D/o. Chumman Das Sahu, aged about 11 years.
5. Tekeshwar, S/o. Late Chumman Das Sahu, aged about 7 years (Minor)

Sl.No.2 to 5 (minors) Through : Their Natural Guardian – Mother Smt. Shanti Bai, Wd/o. Late Chumman Das Sau,

6. Muldas, S/o. Gandharoo Sahu, aged about 75 years,
7. Smt. Geeta Bai, W/o. Muldas, aged about 68 years,

All are resident of village Banhardi, P.S. Lalbag, Tahsil and District Rajnandgaon (C.G.)

8. The National Insurance Company Limited, Through : Branch Manager, Branch Kamthi Line, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.).

---- Respondents

AND

M.A. No. 148 of 2005

1. Smt. Shanti Bai, Wd/o. Late Chumman Das Sahu, aged about 35 years,
2. Ku. Nageshwari, D/o. Late Chumman Das Sahu, aged about 15 years (Minor).

3. Chokesh, S/o. Late Chumman Das Sahu, aged about 13 years (Minor).
4. Ku. Shashikala, D/o. Chumman Das Sahu, aged about 11 years.
5. Tekeshwar, S/o. Late Chumman Das Sahu, aged about 7 years (Minor)

Appellant No.2 to 5 (minors) Through : Their Natural Guardian – Mother Smt. Shanti Bai, Wd/o. Late Chumman Das Sau,

6. Muldas, S/o. Gandhru Sahu, aged about 75 years,
7. Smt. Geeta Bai, W/o. Muldas, aged about 68 years,

All are resident of village Banhardi, P.S. Lalbag, Tahsil and District Rajnandgaon (C.G.)

----Appellants

Versus

1. Seikh Rafique, aged about 36 years, son of Seikh Rasul, Caste Musalim, R/o. Raja Talab, Raipur, P.S. Civil Line, Raipur. Presently residing at Mohla, behind Bus Stand, Khadgaon Road, Mohla, Tahsil Mohla, District Rajnandgaon (C.G.)
2. Ashish Kumar Pandey, son of Shri V.N. Pandey, R/o. Sahdev Nagar, Rajnandgaon, Tasil and District Rajnandgaon (C.G.).
3. The National Insurance Company Limited, Through its: Branch Manager, Branch Kamthi Line, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.).

---- Respondents

In M.A. No.1303/2004

For Appellants.	: Mr. P.K.C. Tiwari, Sr. Advocate with Mr. Shashi Bhushan Tiwari, Advocate
For Respondents No.1 to 7	: Ms. Indira Tripathi, Advocate.
For Respondent No.8.	: Mr. Qamrul Aziz, Advocate

In M.A. No.148/2005

For Appellants.	: Ms. Indira Tripathi, Advocate.
For Respondents No.1 & 2	: Mr. P.K.C. Tiwari, Sr. Advocate with Mr. Shashi Bhushan Tiwari, Advocate
For Respondent No.3.	: Mr. Qamrul Aziz, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

14/09/2015

1. Both the appeals are being heard and decided together by this common order as they are arising out of the same accident and award dated 29.10.2004, passed in Claim Case No.53/2002, passed by the Motor Accident Claims Tribunal, Rajnandgaon, District Rajnandgaon (C.G.).
2. One appeal bearing M.A. No.1303/2004 is preferred by the owner and driver of the offending vehicle bus bearing No. M.P.-24-RB-0016, wherein the liability is under challenge. Whereas M.A. No.148/2005 is preferred by the claimants for enhancement of the compensation.
3. Briefly stated facts are that a claim petition was filed by the widow, four minor children, mother and father of the deceased namely Chumman Das Sahu. It was the case of the claimants that on 16.01.2002, the deceased Chumman Lal Sahu was travelling on his bicycle and was going to Arjuni, when he reached near Perri river bridge, at that time, a bus bearing No. M.P.-24-RB-0016, driven by original non-applicant No.1, Seikh Rafique in a rash and negligent manner, dashed the deceased, Chumman Das Sahu and he was dragged to 20 to 30 feet and by impact of such accident, he died on the spot. It was stated that at the time of the accident, the deceased was aged about 42 years and was tailor and used to earn Rs.4,000/- per month from tailoring. Consequently, under different heads, an amount of Rs.26,25,000/- was claimed for.

4. The non-applicants, driver, Seikh Rafique and owner, Ashish Kumar Pandey remained ex-parte before the Claims Tribunal.
5. The non-applicant No.3, insurance company, contested the claim case and it was stated that at the relevant time, the driver of the offending vehicle namely Seikh Rafique was not having any valid driving license and thereby it resulted into breach of terms of the insurance policy, therefore, the insurance company was not liable to make good the payment. It was further stated that the case got investigated by the insurance company, wherein, it was found that the license which was held by the driver of the offending vehicle was fake and such driving license was not issued at all at its inception. Therefore, the insurance company is not liable to make good any amount of compensation.
6. The learned Claims Tribunal after evaluating the fact and evidence on record has passed an award of Rs.4,19,960/- in favour of the claimants and exonerated the insurance company on the ground that on the date of incident, the license which was being used by the owner and driver of the offending vehicle was fake one, therefore, it will amount to breach of terms of policy.
7. Two appeals have been preferred. One appeal bearing M.A. No.1303/2004 is preferred by the owner and driver of the offending vehicle and one appeal bearing M.A. No.148/2005 is preferred by the claimants.
8. Initially, M.A. No.148/2005, filed by the claimants is being adjudicated to adjudicate the quantum of compensation.

9. This fact is not in dispute that the accident had happened. During the course of appeal also this fact is not under challenged that at the relevant time due to rash and negligent driving of the offending bus bearing No. MP-24-RB-0016, the accident had occurred and Chumman had died. In absence of any challenge to the same, such findings are affirmed.
10. The learned Claims Tribunal in this case has assessed the compensation on the basis of statement of Shanti Bai (A.W.-1) and Dikeshwar Prasad (A.W-2).
11. Learned counsel for the appellants/claimants would submit that the Tribunal has failed to award just compensation. It is further submitted that future prospects has also not been awarded and the multiplier has also wrongly been applied. It is further submitted that on the conventional head, meager amount has been awarded which needs to be reassessed.
12. Reading of the award would show that the Tribunal has assessed the income of the deceased by taking the monthly income of Rs.5,000/-. The said assessment is not under challenge. In the claim petition, it is contended that the deceased used to earn Rs.5,000/- per month whereas in the statement, the wife has stated that the deceased used to earn Rs.10,000/- per month. The assessment of income of Rs.5,000/- is not challenged by the respondent, therefore, the notional income of the deceased as assessed to Rs.5,000/- per month is affirmed. Therefore, the yearly income comes to Rs.60,000/-.

13. Perusal of the award would show that the learned Claims Tribunal has not added any sum towards future prospects. Here in the instant case, the age of the deceased, appears to be of 45 years as would be evident from postmortem report, Ex.P/5. Considering the fact that the deceased was aged about 45 years at the time of the accident, there would be further addition of 30% as future prospects as per the law laid down in case of **Rajesh & Others Vs. Rajbir Singh & Others** reported in **(2013) 9 SCC 54**, over and above the income of Rs.60,000/- and thereby the 30% of amount comes to Rs.18,000/- and total income comes to Rs.78,000/-.
14. Now coming to the deduction towards personal expenses, the claim petition was preferred by the widow, 4 minor children and mother & father of the deceased meaning thereby 7 persons. Therefore, as per the law laid down in case of **Sarla Verma Vs. Delhi Transport Corporation** reported in **(2009) 6 SCC 121**, as the dependency exceeds six, there would be deduction of $\frac{1}{5}^{\text{th}}$, which comes to Rs.15,600/-. So the dependency comes to Rs.62,400/- (78,000 – 15,600). Further the deceased was aged about 45 years as per the postmortem report, Ex.P/5, as such multiplier of 14 would be applicable. Thus the total dependency comes to Rs.8,73,600/-.
15. Under the conventional head, the learned Claims Tribunal has only awarded Rs.5,000/- for loss of consortium. Rs.5,000/- for loss of love and affection to the children. Rs.5,000/- for loss of love and affection to the mother and father and Rs.5,000/- towards funeral expenses. In the opinion of this Court, the amount so granted under conventional heads also need to be reassessed in view of the law

laid down in case of **Asha Verman Vs. Maharaj Singh and Ors.**, reported in **2015 AIR SCW 3577**. Therefore, considering the age of widow of the deceased, I am inclined to award Rs.1,00,000/- to the wife for loss of consortium, Rs.25,000/- each to the minor children for loss of love and affection and care thereby Rs.1,00,000/- is awarded for loss of love and affection to the minor children, Rs.50,000/- for loss of love and affection to the mother and father, Rs.25,000/- for loss of estate and Rs.25,000/- for funeral expenses. Thus the total compensation to be reassessed is as follows :-

S.N.	Heads	Calculation
(i)	Notional income @ Rs.5,000/- per month	Rs.60,000/- per annum
(ii)	30% of (i) above to be added as future prospects.	(Rs.60,000 + 18,000 = Rs.78,000/-
(iii)	1/5 th (ii) deducted as personal expenses of the deceased.	Rs.78,000 – 15,600 = Rs.62,400/-
(iv)	Compensation after multiplier of 14 is applied.	Rs.62,400 x 14 = Rs.8,73,600/-
(v)	Loss of consortium to the wife.	Rs.1,00,000/-
(vi)	For loss of love & affection to the 4 minor children @ Rs.25,000/- each (25,000 x 4 = 1,00,000/-)	Rs.1,00,000/-
(vii)	For loss of love and affection to the mother and father	Rs. 50,000/-
(viii)	Loss of estate.	Rs. 25,000/-
(ix)	Funeral expenses.	Rs. 25,000/-
	Total	Rs.11,73,600/-

16. Thus, the total compensation will be Rs.11,73,600/-. After deducting Rs.4,19,960/- awarded by the Tribunal, the enhancement would be Rs.7,53,640/-.
17. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs.7,53,640/- in addition to what is

already awarded by the Claims Tribunal.

18. Now coming to the 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.
19. So far as it relates to apportionment, out of total award of Rs.11,73,600/-, it is directed that an amount of Rs.50,000/- each shall be deposited in the name of each claimant/children, who are numbering into 4 in the form of Fixed Deposit in any Nationalised Bank initially for a period of 3 years. Rs.2,00,000/- shall be given to the mother and father of the deceased and the remaining amount of award shall be disbursed to the widow of the deceased
20. The Registry is further directed to communicate the claimants in writing the “amount enhanced in this appeal” as against the award made by the Tribunal below. The said communication be made in Hindi Devanagari language.
21. Now reverting the appeal bearing M.A. No.1303 of 2004, filed by the owner and driver of the offending vehicle, predominantly, the argument which is raised that the proper notice was not served to the driver and owner i.e. Seikh Rafique and Ashish Kumar Pandey.

22. Learned counsel for the appellants would submit that in the claim petition, itself, the driver been shown to be presently resident at Rajnandgaon, whereas, the publication was made in daily news paper Deshbandhu circulating at Raipur. It is submitted that the driver, Seikh Rafique was shown to be resident of Rajnandgaon at the time of filing of the claim petition and as such the proceedings of ex-parte against him was bad in law as he was not given proper opportunity of hearing. In respect of the owner, it was also stated that he was also not properly served, therefore, he may be allowed to contest the case on merits.
23. Perusal of the order sheet of the learned Claims Tribunal shows that Ashish Kumar Pandey was served with the summons of the Tribunal on 11.02.2003. Thereafter, despite service of summons, he did not appear before the Court and as such he was proceeded ex-parte. The address shown of Ashish Kumar Pandey was of Rajnandgaon, who was the owner of the offending bus. Nothing is on record to show and the perusal of the appeal memo would show that what was the reason for which he did not appear and such fact is not clear. Appeal memo filed by the owner, Ashish Kumar Pandey, the same address has been shown, which is shown in the claim petition filed under Section 166 of the Motor Vehicle Act. Therefore, the grounds raised by Ashish Kumar Pandey that he was not properly served can not be appreciated.
24. The appeal is also filed by Seikh Rafique, the driver of the offending vehicle upon whom, the liability has been fastened jointly and severally. Perusal of the order of the Court below dated 27.06.2003

would show that he was proceeded ex-parte on the basis of publication made at daily news paper, Deshbandhu. Copy of the publication is also placed before this Court as Annexure -B in the memo of appeal, which shows that publication report was made at daily news paper Deshbandhu, which is circulating at Raipur. On affidavit, it is stated by Seikh Rafique that he was not aware of the fact that a petition for claim case was filed against him at Rajnandgaon. It is further submitted on affidavit that no service was made on him.

25. Perusal of the claim petition would show that Seikh Rafique has been arrayed as respondent No.1. Two addresses have been shown simultaneously in the cause title. One address is shown as Raja Talab, Raipur and it is also written that presently "hall-mukam" at Mohla, P.S. Mohla, District Rajnandgaon. Certified copy of summons, which is filed alongwith the appeal memo shows that summon report come with endorsement that no person resides in the given address. Perusal of summons and records reveal that address of respondent was shown at two places. It was also written that presently the respondent is resident of Rajnandgaon. So any notice issued at the address of Raipur certainly could not have been served. The publication was also made at a paper circulating in city of Raipur. In the facts of the case it appears that original respondent, Seikh Rafique was not noticed of the claim petition. In view of such fact, the appeal preferred by the driver, Seikh Rafique is allowed in part and the liability fastened over Seikh Rafique is set-aside on the ground that he was not noticed of the petition.

26. The matter is remanded back to the learned Claims Tribunal with a direction that the learned Claims Tribunal shall adjudicate the liability of the driver, Seikh Rafique on the basis of the defence raised by him, if any, by way of pleadings. It is further made clear that quantum of liability has already been adjudicated which shall not be subjected to any further adjudication. The case is remanded only to adjudicate the issue whether the liability can be fastened over the driver, Seikh Rafique or not and further if on the date of accident the driver is able to substantiate the fact by evidence that on the date of accident he was holding a valid license in such eventuality the liability to pay the compensation shall be that of the insurance company too alongwith the driver and owner of the vehicle.
27. The parties shall appear before the learned Claims Tribunal on 15/10/2015 and the learned Claims Tribunal shall be further obliged to decide the same within further period of six months.
28. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge