

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 379 of 2014

1. Smt. Manthira Thakur, W/o Late Ishwar Lal Thakur, aged about 42 years,
2. Ku. Rajkumari, D/o. Late Ishwar Lal Thakur, aged about 18 years,
3. Ajay, S/o Late Ishwar Lal Thakur, aged about 15 years
(Minor), Thru- Mother Smt. Manthira Thakur, All R/o. Malighori (Dudhli), P.S. Balod, Tah. Dondilohara, Distt. Balod C.G.

---- Appellants

Versus

1. Surendra Kumar Sahu, S/o. Sitaram Sahu. aged about 37 years, R/o Village & Post- Itar, Distt. Rajnandgaon C.G., At Present R/o Near Sai Photo Studio, Dalli Chowk, Balod, P.S., Tah. and Distt. Balod C.G.
2. M/s. Balod Bus Service, Indira Chowk, Balod, Thru- Director/Partner- Rupesh Kumar Rakecha, S/o. Lalchand Rakecha, Aged about 31 years, R/o Village & Post- Achholi, P.S. and Tah. Dondilohara, Distt. Balod (C.G.)
3. National Insurance Company Limited, Through- Branch Office, Kamthi Line, Rajnandgaon, Distt. Rajnandgaon C.G.

---- Respondents

And

M.A.(C) No. 378 of 2014

1. Smt. Bhagwati Thakur, W/o. Shivdayal Thakur, aged about 45 years, R/o. Village Malighori (Dudhali), P.S. Balod, Tah. Dondilohara, Distt. Balod C.G.

---- Appellant

Vs

1. Surendra Kumar Sahu, S/o. Sitaram Sahu. aged about 37 years, R/o Village & Post- Itar, Distt. Rajnandgaon C.G., At Present R/o Near Sai Photo Studio, Dalli Chowk, Balod, P.S., Tah. And Distt. Balod C.G.
2. M/s. Balod Bus Service, Indira Chowk, Balod, Thru- Director/Partner- Rupesh Kumar Rakecha, S/o Lalchand Rakecha, Aged about 31 years, R/o Village & Post- Achholi, P.S. and Tah. Dondilohara, Distt. Balod (C.G.)
3. National Insurance Company Limited, Through- Branch Office, Kamthi Line, Rajnandgaon, Distt. Rajnandgaon C.G.

----- Respondents

For Appellants	:	Mr. Purnendra Khicharia, Advocate
For Respondent No.3	:	Mr. R.N. Pusty, Advocate.
For Respondent No.1 & 2	:	None present.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21/07/2015

1. The following appeals are being heard and decided together by this common order as they are arising out of the same accident and award passed by the 2nd Additional Motor Accident Claims Tribunal, Balod, dated 25.01.2014 and common question of law is involved in these appeals.
2. M.A.(C) No.379/2014 is arising out of the Claim Case No.51/2013, filed by Smt. Manthira Thakur, Ku. Rajkumari & Ajay for death of Rajesh Kumar Thakur, wherein as against the claim made of Rs.25,00,000/-, an award of Rs.1,90,000/- was passed. Whereas M.A.(C) No.378/2014 is arising out of the Claim Case No.50/2013, filed by Smt. Bhagwati Thakur for death of Kishore Kumar Thakur, the son of the appellant, wherein as against the claim made of Rs.25,60,000/-, an award of Rs.2,02,000/- was passed.
3. Brief facts of the case are that on 25.10.2012, the deceased Kishore Kumar Thakur and Rajesh Kumar Thakur were going on their motor cycle from Malighori to Daundilohara, when they reached near Malighori bridge, another Bus bearing No.C.G.-07-E-0461 of M/s. Balod Bus Service, the original non-applicant No.2, which was coming from opposite side driven in rash and negligent manner,

dashed the motor cycle, thereby both of them sustained severe injuries and ultimately succumbed to the injuries.

4. Two separate claim petitions were filed. One claim petition bearing No.51/2013 was filed by Smt. Manthira Thakur, Rajkumari and Ajay, mother, sister and brother of the deceased, Rajesh Kumar Thakur. Whereas another claim petition bearing No.50/2013 was filed by Smt. Bhagwati Thakur, the mother of the deceased Kishore Kumar Thakur.
5. The driver & owner of the bus refuted the claim and stated that at the relevant time, the bus was not being driven in rash and negligent manner. It was further stated that the vehicle was insured with the non-applicant No.3, therefore, the insurance company is liable to make good the amount of compensation.
6. The insurance company also refuted the averments of the claim petition and stated that the petition is liable to be dismissed for non-joinder of the parties for the reason that the insurer of the vehicle i.e. motor cycle has not been impleaded as party.
7. The learned Claims Tribunal after evaluating the facts and the evidence on record came to a finding that at the relevant time, the offending vehicle i.e. Bus bearing No.C.G.-07-E-0461 was being driven in rash and negligent manner and dashed both the deceased, who were traveling on the motor cycle and consequently they died. There is no challenge to such finding, therefore, in absence of any challenge, the finding of rash and negligent driving of the offending bus is affirmed.

8. Learned counsel for the appellants would submit that in both the claim cases, the learned Claims Tribunal has failed to award just compensation. He would further submit that the multiplier has wrongly been applied and the future prospects has also not been added while granting the compensation. It is further stated that on the conventional head, meager amount has been awarded and that should be suitably enhanced.
9. Per contra, learned counsel appearing on behalf of the respondent No.3 vehemently opposes the argument and would submit that as per the evidence on record, just compensation has been awarded by the learned Claims Tribunal. He would further submit that the award is well merited, which do not call for any interference.
10. I have heard the learned counsel for the parties at length, perused the documents and the evidence on record.
11. Initially the finding of claim case No.51/2013, is being considered, which was filed by Smt. Manthira Thakur and others for death of Rajesh Kumar Thakur.
12. In this case, the claimants, Manthira Thakur was examined on behalf of the claimants. This witness has stated that at the time of accident, her son was aged about 25 years and was earning Rs.200/- per day and they were dependent upon him. In the cross-examination, the suggestion given to this witness was denied that at the relevant time, the deceased was getting Rs.50 to Rs.60/- per day. She admitted the fact that her son was working as labour, however, no documents has been filed. This fact was also admitted that the claimants that they are below the poverty line and entitled

for benefits granted by the State.

13. The Tribunal has assessed the income of the deceased Rajesh to Rs.3,000/- per month. Considering the facts that the accident had happened on 25.10.2012 and the notional income as was prescribed in Second Schedule as provided in Sub-Section (3) of Section 163-A of the Motor Vehicles Act, notional income was fixed that of Rs.15,000/- in year 1994, therefore, if the hike in price of essential commodities and cost of living during the period of 1994 and 2012 are taken into consideration, the notional income, in the opinion of this Court, would certainly come to Rs.36,000/- per annum.
14. Further more, since the deceased was aged about 25 years at the time of accident and he was self employed. Consequently, taking into account the law laid down in case of **Rajesh & Others Vs. Rajbir Singh & Others** reported in **(2013) 9 SCC 54**, there would be further addition of 50% as future prospects over and above the income of Rs.36,000/- and thereby the 50% of amount comes to Rs.18,000/- and total income comes to Rs.54,000/-.
15. Since the deceased was bachelor, therefore, 50% would be deducted from the annual income towards personal expenses, thereby the amount comes to Rs.27,000/- per annum. As per the postmortem report Ex.P-4, the deceased Rajesh Kumar Thakur was aged about 25 years at the time of accident, therefore, multiplier of 18 would be applicable as per the law laid down in case of **Sarla Verma Vs. DTC, reported in (2009) 6 SCC 121**, and thereby the dependency works out to Rs.4,86,000/-.

16. The learned Claims Tribunal has further awarded Rs.5,000/- for loss of estate and Rs.5,000/- for funeral expenses. The amount awarded for loss of estate is hereby maintained. Further no amount has been granted on the head of love and affection to the claimants, therefore, considering the number of the claimants, a consolidated sum of Rs.50,000/- is granted for loss of love and affection. Further the amount of Rs.5,000/- granted towards funeral expenses appears to be too meager, therefore, the same is enhanced to Rs.15,000/-. In a result, the amount of compensation is re-assessed as under in M.A.(C) No.379/2014:-

S.N.	Head	Calculation
1.	Loss of dependency	4,86,000.00
2.	For loss of estate	5,000.00
3.	For love and affection	50,000.00
4.	For funeral expenses	15,000.00
	Total Compensation	5,56,000.00

17. Thus, the total compensation is recomputed as Rs.5,56,000/-. After deducting Rs.1,90,000/- as awarded by the tribunal, the enhancement would be Rs.3,66,000/-. The appellants will be entitled to the said sum of Rs.3,66,000/- in addition to what is already awarded by the learned Claims Tribunal with interest @ 9% per annum on the enhanced claim amount from the date of filing of claim petition till the date of its realization.

18. Now turning to the Claim Case No.50/2013 filed by Smt. Bhagwati Thakur, wherefrom M.A.(C) No.378/2014 arises, the Tribunal has assessed the income of the deceased to Rs.3,200/- per month and Rs.38,400/- per annum. The claimant in this case has proved the

letter of appointment, which is marked as Ex.P-9. According to the document Ex.P-9, the deceased was appointed in the Post Office and it was contract appointment in the pay scale of Rs.2745/-. Taking into such fact, the income as has been assessed by the learned Claims Tribunal of Rs.3,200/- is appears to be just and expedient. The Tribunal has not added any future income to the said amount, therefore, following the law laid down in case of ***Rajesh & Others Vs. Rajbir Singh & Others*** (supra), there would be further addition of 50% as future prospects over and above the income of Rs.38,400/- and thereby the 50% of amount comes to Rs.19,200/- and total income comes to Rs.57,600/-.

19. Since the deceased was bachelor, therefore, 50% would be deducted from the annual income towards personal expenses, thereby the amount comes to Rs.28,800/-. Taking into the facts that the age of the deceased was 24 years at the time of accident, therefore, multiplier of 18 would be applicable and thereby the dependency works out to Rs.5,18,400/-.
20. The learned Claims Tribunal has further awarded Rs.5,000/- for loss of estate and Rs.5,000/- for funeral expenses. The amount awarded towards loss of estate is hereby maintained. Further no amount has been granted for love and affection to the mother, therefore, an amount of Rs.50,000/- is granted for loss of love and affection. The amount of Rs.5,000/- granted towards funeral expenses appears to be too meager, therefore, the same is enhanced to Rs.15,000/-. Therefore, the amount of compensation is re-assessed as under in M.A.(C) No. 378/2014:-

S.N.	Head	Calculation
1.	Loss of dependency	5,18,400.00
2.	For loss of estate	5,000.00
3.	For love and affection	50,000.00
4.	For funeral expenses	15,000.00
	Total Compensation	5,88,400.00

21. Thus, the total compensation is recomputed as Rs.5,88,400/-. After deducting Rs.2,02,000/- as awarded by the tribunal, the enhancement would be Rs.3,86,400/-. The appellants will be entitled to the said sum of Rs.3,86,400/- in addition to what is already awarded by the learned Claims Tribunal with interest @ 9% per annum on the enhanced claim amount from the date of filing of the claim petition till the date of its realization.
22. In the result, both the appeals filed by the claimants are partly allowed. No order as to costs.
23. 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.

Sd/-
(Goutam Bhaduri)
Judge