

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1113 of 2013**

1. Smt.Shambati Mourya Wd/o Late Ramchandra Mourya Aged About 38 Years R/o Jamgaon, P.S. Bhanpuri, Distt. Bastar C.G.
2. Ramlal S/o Late Ramchandra Mourya Aged About 15 Years Minor, Through- legal guardian Mother Smt. Shaymbati Mourya, R/o Jamgaon, P.S. Bhanpuri, Distt. Bastar C.G.
3. Shyamlal S/o Late Ramchandra Mourya Aged About 13 Years Minor, Through- legal guardian Mother Smt. Shaymbati Mourya, R/o Jamgaon, P.S. Bhanpuri, Distt. Bastar C.G.
4. Miss Pramila D/o Late Ramchandra Mourya Aged About 8 Years Minor, Through- legal guardian Mother Smt. Shaymbati Mourya, R/o Jamgaon, P.S. Bhanpuri, Distt. Bastar C.G.

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1. Balram Yadav S/o Koudiram Yadav Aged About 33 Years R/o Nandpura, P.S. Bhanpuri, Distt. Bastar C.G.
2. Rajkumar Gupta S/o Jagadi @ Jangali Prasad Gupta Aged About 50 Years R/o Kesharpal, P.S. Bhanpuri, Distt. Bastar C.G.
3. Universal Sompo General Insurance Co.Ltd. Through- Branch Manager, Address- At Unit 401, Fourth Floor, Sangam Complex 127 Andheri Kurla Road, Andheri (East), Mumbai 400059 (M.H.)

---- Respondents

For appellants – Shri P.K. Tulsian, Advocate.

For Respondent No.3 – Shri Amrito Das and Shri Nimesh Kiran Sharma, Advocates.

Hon'ble Shri Justice Goutam Bhaduri**Order****9/09/2015**

1. Challenge in this appeal is to the award dated 22/10/2013 passed in claim case No.24/2013 by the Motor Accident Claims Tribunal, Jagdalpur. By such award claim petition was dismissed by the tribunal. Appeal is by the claimants/appellants.

2. Brief facts of this case are that claim petition was preferred by widow, two minor son and one minor daughter of the deceased Ramchandra Maurya. It was pleaded that on 23/10/2012 during the period of Navratri the deceased had went to the village Nandpura to participate in the pooja of goddess Durga. While he was going back to his house at that time in front of temple of Nandpura at Amliguda-Icchapur road near a culvert the tractor bearing No. CG 17 –G/2494 which was being driven by Balram Yadav in a rash and negligent manner dashed the said Ramchandra Maurya. By impact of such, Ramchandra Maurya came under the tractor and died on the spot itself. In respect of such case, criminal case was registered. It was stated that at the time of accident the deceased was aged about 40 years and used to earn Rs.10,000/- per month and claimants were dependents on him. Therefore, on different heads an amount of Rs.15,30,000/- was claimed. It was further stated that at the time of accident vehicle was being driven by the original non-applicant No.1 Balram Yadav and it was owned by Rajkumar Gupta son of Jagdi and the vehicle was insured with original non-applicant No.3 Universal Sompo General Insurance Company Limited.

3. Before the court below despite service of the summons respondents/non-applicants remained ex-parte. No written statement or defence was filed and case was not contested before the court below. Tribunal however after evaluating the evidence has given a finding that only on the basis of the fact that criminal case was filed against Balram Yadav it cannot be held that at the relevant time vehicle was being driven by Balram Yadav in a rash and negligent manner and dismissed the claim petition.

4. Learned counsel appearing on behalf of the claimants/appellants would submit that tribunal has completely misdirected itself to evaluate the evidence. He submits that criminal case placed on record would go to show that at the relevant time vehicle was being driven by original non-applicant No.1 Balram Yadav and because of its use accident had happened. He referred to statement of AW-2 one Suldhar who has stated that accident happened due to rash and negligent act of respondent No.1 remains un-rebutted. Therefore, in view of such facts it cannot be presumed unilaterally by the tribunal that at the relevant time claimants has failed to prove that at the relevant time vehicle was not involved in the accident and accordingly compensation should have been awarded.

5. Per contra, Shri Amrito Das, Advocate along with Shri Nimesh Kiran Sharma would submit that award is well merited which do not call for any interference by this court.

6. I have heard learned counsel for the parties at length, perused the documents and the evidence. Non-applicants remained ex-parte before the court below. They have chosen not to contest the case or adduce any evidence in rebuttal. Perusal of the record would show that claimants on their behalf had examined widow Shambati. She has stated that after receiving the news that her husband died out of the accident she had been to the spot and saw that her husband had died as he came under the tractor. It is further stated that tractor belonged to Rajkumar Gupta and was being driven by one Balram Yadav. She has exhibited the documents from Ex.A-1 to A-10. The document Ex.A-1 pertains to the FIR and it was lodged by one Suldhar Kotwar. He has stated that he had went to the spot

and saw that tractor had fallen down from the culvert and person came under such tractor and he was dead. Report shows that initially it was stated that some person has died who was not known. Now if statement of the claimant widow is examined. It would reveal that after receiving the information that her husband died in an accident she went to the spot and saw that her husband was under the tractor which fallen from the culvert is affirmed from the contents of FIR. The nakhsa panchayatnama also corroborate the fact which shows that the deceased Ramchandra Maurya came under the tractor which fallen down from the culvert and died. Postmortem report Ex.A-8 also corroborate the fact that deceased had died because of the accident. Document Ex.A-9 would show the said tractor was taken on custody by original non-applicant No.2 Rajkumar Gupta. Therefore it can be presumed that the said vehicle was involved in the accident whereby the deceased Ramchandra Maurya died.

7. Further statement of Suldhar also reaffirms the fact that tractor belong to Rajkumar Gupta. He has stated that tractor belong to Rajkumar Gupta and at the time of accident it was being driven by Balram Yadav and when tractor fell down in canal the deceased Ramchandra came under the tractor and died. He further stated that when body was removed and taken out from below the tractor he was present in spot and he had identified the deceased. There is no rebuttal to this evidence.

8. Learned trial court has given a finding that on the basis of the statement and the criminal case it cannot be stated that accident had occurred by use of the tractor. On perusal of the said document and the statement in my opinion it appears that finding arrived by the tribunal

cannot be justified and can be held to be legal. Most significant part is the driver and owner of the offending vehicle has not examined themselves. They have not entered into witness box to explain that how the accident had happened. Therefore, in absence of any evidence only piece of evidence available on record is the FIR and the documents of investigation of the accident has to be accepted. Further more the widow of the deceased who has seen her husband suppressed under the tractor which is corroborated by AW-2 Suldhar falls in line to the crime detail and the naksha panchayatnama wherein it shows that under the tractor body of the deceased was pressed and body was taken out after removal of tractor. Perusal of the document would lead to show that tractor having been driven in a rash and negligent manner had caused the accident. There is no evidence as to rebutt all these facts and evidence. Therefore considering all the evidence together it leads to prove that the accident had happened and the finding that the accident had not happened cannot be upheld and accordingly it is set aside.

9. Now coming to the question of compensation. It was stated by the claimant in their claim petition that at the time of accident the deceased used to earn Rs.10,000/- per month. There is no rebuttal to this pleading, however in the evidence widow has not placed on record anything so as to substantiate the fact that the income of the deceased was Rs.10,000/-. Therefore in order to assess the loss of income it will be necessary to assess the income on the basis of notional income.

10. In order to arrive at notional income, if the provisions of Second Schedule as provided in Sub-section (3) of Section 163-A of the Motor

Vehicles Act are looked into, it has fixed the notional income to the extent of Rs. 15,000/- in the year 1994. As the Central Government has failed to amend the second schedule as provided in Sub-section (3) of Section 163-A of the Motor Vehicles Act, the Courts/Tribunal can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the second schedule in the year 1994 and the date of accident in the given case.

11. Perusal of the statement of the claimants would show that the deceased belonged to unorganized sector, therefore, it would be difficult to expect that the income would have been documented and it could have been proved by any other factum except making oral statement. In this case, the incident took place in the year 2012, therefore, taking into the account the wages of the labour which was ranging from Rs. 100-150 during the period 2012 and reverting to the present case, as the accident has happened in the year 2012, considering the increase in price of essential commodities during the period from 1994 to 2012, as also taking into the fact the wages which was prevailing for the labour according to the second schedule, in the opinion of this Court, the notional income of the deceased would be Rs. 3,000/- per month in the facts and circumstances of the case. Consequently, the notional income of the deceased is assessed to Rs. 3,000/- per month and thereby the annual income comes to Rs. 36,000/-.

12. According to the statement of the wife age of the deceased at the time of accident was 40 years which is also corroborated by the postmortem report Ex.A-8 wherein age of the deceased is shown to be 40

years. Therefore there would be further addition of 50% as future prospect as per law laid down in case of **Rajesh and others Vs. Rajbir Singh and others, (2013) 9 SCC 54** over and above income of Rs.36,000/- and thereby 50% amount comes to Rs.18,000/- and after addition of future prospect of 50% total income comes to Rs.54,000/-. Now coming to the deduction towards personal expenses. Claim petition was preferred by four persons, through widow and three minor children. Consequently following the principles laid down in case of **Sarla Verma Vs. DTC (2009) 6 SCC 121** there will be deduction of $\frac{1}{4}$ i.e. Rs.13,500/-. Therefore, after deducting $\frac{1}{4}$ towards personal expenses, annual dependency comes to Rs.54,000 – Rs.13,500 = Rs.40,500/-. Deceased falling to the age group of 40 years as such multiplier of 15 would be applicable. After applying multiplier of 15 dependency comes to 6,07,500/. Under the conventional head nothing has been awarded. Therefore, following the law laid down in case of **Asha Verma Vs. Maharaj Singh and others 2015 AIR SCW 3577** and considering the age of the widow, I am inclined to award Rs.1 lakh to the wife for loss of consortium, Rs.25,000/- each to the three children i.e. total Rs.75,000/- for loss of love and affection, for loss of estate Rs.25,000/- and for funeral expenses Rs.15,000/- is awarded. Thus, the total compensation is assessed as follows:-

S.No.	Heads	Calculations
(i)	Annual income	Rs.36,000/-
(ii)	50% of (i) above to be added as future prospect	Rs.36,000 + 18,000 = Rs.54,000/-
(iii)	After deducting $\frac{1}{4}$ of (ii) above towards personal expenses annual dependency comes to	Rs.54,000 – Rs.13,500 = Rs.40,500/-.

(iv)	After applying multiplier of 15 dependency comes to	Rs.40,500x15 = Rs. 6,07,500/-
(v)	For loss of consortium to the wife	Rs.1,00,000/-
(vi)	For loss of love and affection to three minor children	Rs.75,000/-
(vii)	For loss of estate	Rs.25,000/-
(viii)	For funeral expenses	Rs.15,000/-
	Total	Rs.8,22,500/-

13. Thus, the total compensation is computed as Rs.8,22,500/-.

14. In the result, the appeal is partly allowed. The appellants/claimants would be entitled to sum of Rs.8,22,500/- with interest @ 9% per annum on the compensation amount from the date of filing of the application till the date of actual payment. The claimants are entitled to receive the said compensation from all the respondents jointly and severally.

15. So far as it relates to apportionment, out of total compensation, Rs. 1.5 lakhs each shall be deposited in the name of three children thereby Rs. 4.5 lakhs in a nationalized bank in form of fixed deposit for a period three years. Remaining amount shall be paid to the wife.

16. The Registry is further directed to communicate the claimants in writing the amount of compensation awarded in this appeal. The said communication be made in Hindi Devanagari language.

Sd/-
(Goutam Bhaduri)
JUDGE

