

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 509 of 2008**

1. Anand Kumar Sinha S/o Shri Vishram Sinha, aged about 43 years.
2. Ku. Leena Sinha D/o Shri Anand Kumar Sinha, aged about 19 years.
3. Komal Sinha S/o Shri Anand Kumar Sinha, aged about 15 years, Minor through natural guardian father Anand Kumar Sinha S/o Vishram Sinha,

All R/o village Rangitola (Chichola), P.S. Chichola, Tahsil and District Rajnandgaon (C.G.)

---- Appellants**Versus**

1. Navin Kumar Sinha S/o Shri Anand Kumar Sinha, aged about 22 years, R/o Village Chichola, P.S. Chichola, Tahsil and District Rajnandgaon (C.G.).
2. Branch Manager, Ifko Tokyo General Insurance Company Limited, 345-347, Third Floor, Lal Ganga Shopping Maal, Raipur (C.G.)

---- Respondents

For Appellants.	:	Shri A.L. Singroul, Advocate.
For Respondent No.1	:	Shri Goutam Khetrapal, Advocate.
For Respondent No.2	:	Shri Amrito Das, Advocate.

Hon'ble Shri Justice Pritinker Diwaker**Order On Board****08/07/2016**

This appeal filed by the claimants arises out of the award dated 07.09.2007 passed by the Motor Accident Claims Tribunal, Rajnandgaon (in short "the Tribunal") in Claim Case No.02/2007, whereby in a death case compensation of Rs.1,52,000/- has been awarded in favour of the claimants.

02. Facts of the case, in brief, are that on 17.09.2006 when respondent No.1 was riding his motorcycle Hero Honda Splendor bearing registration NO. CG-08-F-4625 and the deceased Meenabai was sitting as pillion rider,

the vehicle was dashed by some unknown vehicle resulting in death of the deceased.

03. A claim case was filed by the claimants, who are husband, minor daughter and son of the deceased, claiming compensation of Rs.19,75,000/- under various heads, *inter alia*, pleading that at the relevant time the deceased was earning Rs.8,000/- per month from her Chat Thela, used to give Rs.7,500/- per month for household expenses, died in the accident due to rash and negligent riding of vehicle by respondent No.1, which was duly insured with respondent No.2, and therefore, they are entitled for compensation as claimed.

04. By the impugned award, the Tribunal has awarded compensation of Rs.1,52,000/- with interest @ 12% p.a. in favour of the claimants from the date of application till realization.

05. Learned counsel for the appellants submits that as the policy was Two Wheeler Insurance Package Policy and according to conditions of the policy, the risk of pillion rider is also covered, the Tribunal has erred in law in exonerating the insurance company and holding respondent No.1 alone responsible to pay the compensation. It has been argued that relationship of the appellants with respondent No.1 has nothing to do with the case once the policy in favour of respondent No.1 was two wheeler insurance package policy which covered the risk of the occupant/pillion rider. It has been further argued that even the amount of compensation is on the lower side and the same is required to be enhanced. Learned counsel for the appellants also argued that in conventional heads the suitable amount has not been awarded. Likewise, income of the deceased has also wrongly been calculated by the Tribunal. He placed reliance in the matter of **Yashpal Luthra & Anr. Vs. United India Insurance Co. Ltd. & Anr.** reported in **2011**

ACJ 1415 wherein the High Court of Delhi has held as under:

In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.

He has also placed reliance on the circular dated 16.11.2009 issued by the Insurance Regulatory and Development Authority (in short 'IRDA') casting liability on the insurance company to pay compensation to claimants for injuries/death of pillion rider on a two wheeler insured under a package/comprehensive policy.

06. On the other hand, supporting the impugned award it has been argued by counsel for respondent No.2/insurance company that the award impugned being in accordance with law warrants no interference and the Tribunal is fully justified in exonerating the liability of the insurance company. He also argued that the circular dated 16.11.2009 issued by IRDA is not applicable in the present case as the insurance policy was issued in the year 2005 and the incident took place in the year 2006 which is prior to issuance of the circular and as no extra premium was paid for covering risk of the pillion rider, the insurance company is not liable to pay any compensation.

07. Shri G. Khetrapal, counsel appearing for respondent No.1 submits that Tariff Advisory Committee (in short the 'TAC') has already issued circular dated 18th March, 1978 making the same effective from 25th March, 1977 covering the risk of the occupant that includes pillion rider in two wheeler and the circular dated 16.11.2009 issued by IRDA is nothing but a clarification of earlier circular. He also submits that in view of this, even if the accident had

taken place prior to issuance of circular dated 16.11.2009 and the policy is prior to the circular, the risk of pillion rider is squarely covered under the comprehensive packaged policy.

08. Heard learned counsel for the parties and perused the material available on record.

09. As regards the issue decided by the Tribunal exonerating the insurance company on the ground that risk of pillion rider is not covered, the same is contrary to the judgment of Division Bench of this Court rendered in the matter of **Vinay Shaha and others Vs. Harvilas Hajarilal Mistri and another** reported in **2013 ACJ 373** wherein it has been held by this Court as under:

“9. Deceased Mayarani Shaha at the time of the accident was travelling as pillion rider on the offending Hero Honda motorcycle which was being driven by respondent No.1 Harvilas, the owner-cum-driver of the said motor cycle. This motor cycle for the relevant period was insured under insurance policy, Exh. D1, The above insurance policy, Exh. D1, reveals that it was a package policy for motor cycle/scooter.

10. By virtue of the circular dated 16.11.2009 issued by the IRDA, the insurer of the motor cycle has been held liable to pay compensation to claimant/claimants for the injuries/death of the pillion rider on a two-wheeler if the said two wheeler is insured under a package/comprehensive policy.

11. As in the present case, the offending Hero Honda motor cycle was insured with National Insurance Co. Ltd. under a package/comprehensive policy (Exh. D1) and deceased Mayarani Shaha was travelling on the said motor cycle as a pillion rider, the finding recorded by the Tribunal exonerating the insurer of the motor cycle from its liability to pay compensation to the claimants cannot be sustained and is hereby set aside. We hold respondent No.2 National Insurance Co. Ltd., the insurer of the offending Hero Honda motor cycle, liable to pay compensation to the claimants for the death of deceased Mayarani Shaha in the motor accident.”

10. In that view of the matter, even if no extra premium was paid by respondent No.1, once it was package policy, considering the circular dated 16.11.2009 of IRDA, the risk of pillion rider is also covered. Thus, the

Tribunal has erred in law in exonerating the insurance company from its liability and therefore the order of exonerating insurance company is set aside.

11. Now next question which arises for consideration of this Court is whether the Tribunal was justified in awarding compensation of Rs.1,52,000/- to the claimants or not ?

12. The Tribunal has erred in law in determining the income of the deceased as Rs.15,000/- per annum, which it ought to have been considered as Rs.3,000/- per month and Rs.36,000/- per annum. The Tribunal has also not considered the loss of future prospect, which in the present case, considering the age of the deceased as 40 years, ought to have been calculated @ 30%. Likewise, under conventional heads also the Tribunal has awarded very less compensation which is required to be enhanced.

13. The income of the deceased is ascertained as Rs.3,000/- per month which comes to Rs.36,000/- per annum. In addition to this, considering the age of the deceased, there has to be addition of 30% of the annual income thereto towards future prospects. Thus after adding 30% (Rs.10,800/-) towards future prospects, the annual income of the deceased comes to Rs.46,800/-. Since the deceased is survived by three dependents, in view of law laid down in **Sarla Verma (Smt.) and others Vs Delhi Transport Corporation and another, (2009) 6 SCC 121**, 1/3rd (Rs.15,600/-) is to be deducted from the annual income of the deceased towards her personal and living expenses. After making such deduction, the annual loss of dependency comes to Rs. 31,200/-. Considering the age of the deceased at the time of her death i.e. 40 years, in view of guidelines of the Apex Court in *Sarla Verma, (supra)*, multiplier of 15 is applicable in this case. After applying this multiplier, the total loss of dependency comes to Rs.4,68,000/-.

As regards the amount of Rs.32,000/- awarded under conventional heads, in the facts and circumstances of the case, the same appears to be inadequate and deserves to be enhanced to Rs.50,000/- in lump sum. It is enhanced accordingly.

14. In view of what has been discussed above, the appellants/claimants are held entitled for a total compensation of Rs.5,18,000/- and as the interest has been awarded by the Tribunal @ 12% p.a. which is not in accordance with the guidelines of the Reserve Bank of India, therefore, in the larger interest of justice, the interest is reduced to 7.5% p.a. In view of above, the claimants are entitled to receive total compensation of Rs.5,18,000/- including interest @ 7.5% p.a. from respondent No.2 from the date of filing of the claim petition till realisation.

15. In the result, the appeal is allowed in part with modification in the award impugned to the above extent.

Sd/-

(Pritinker Diwaker)
JUDGE