

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No.21 of 2014

1. Smt. Mamta Gupta, Wd/o Late Manoj Gupta, aged about 30 years,
2. Bharat Prasad Gupta, S/o Late Navratan Gupta, aged about 60 years,
3. Smt. Veena Devi Gupta, W/o Bharat Prasad Gupta, aged about 55 years,
4. Miss Jyoti Gupta, D/o Late Manoj Gupta, aged about 15 years,
5. Dev Gupta, S/o Late Manoj Gupta, aged about 12 years,

Appellants No.4 to 5 are minor therefore representing through legal guardian Mother Smt. Mamta Gupta, All are Residents of Village Chhote Garawand, Tahsil Jagdalpur, Post Semara, P.S. Nagarnar, District Bastar, Chhattisgarh

---- Appellants

versus

1. Santosh Padamwar @ Santu, S/o Ramesh Padamwar, aged about 22 years, resident of Geedam Naka, Gurugovind Singh Ward, Near Bhairav Mandir, Jagdalpur, District Bastar, Chhattisgarh
2. Vipin Singh Kushwaha, S/o N.P. Kushwaha, resident of Main Road, Nukulnar, District Dantewada (South Bastar), Chhattisgarh
3. Branch Manager, Cholamandalam Insurance Co. Ltd., Geedam Road, Jagdalpur, District Bastar, Chhattisgarh

---- Respondents

For Appellants	:	Shri Pravin Kumar Tulsyan, Advocate
For Respondent No.1	:	Shri Punit Ruparel, Advocate
For Respondent No.3	:	Shri Rohitashva Singh, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

9.12.2016

1. This appeal by the claimants/Appellants is directed against the award dated 22.10.2013 passed by the Learned Motor Accidents Claims Tribunal, Bastar at Jagdalpur in Claim Case No.62 of 2012, whereby the Claims Tribunal has dismissed the claim petition filed by the claimants.
2. The undisputed facts are that in the intervening night of 27.1.2012 and 28.1.2012, deceased Manoj Gupta was driving his Maruti Swift Car bearing registration No.CG 17 G 2815. He was returning from Asna to

Jagdalpur. On the way, there was a head on collision with a truck bearing registration No.CG 18 H 1019. According to the claimants, this truck was being driven on wrong side and the accident happened due to rash and negligent driving of the driver of the truck. Unfortunately, the claimants did not care to examine any police official. They did not get produced the site map which could have helped this Court to understand which vehicle was on right side and which vehicle was on wrong side. Instead, they produced one Shankar Prasad, who is purported to be an eyewitness.

3. According to the testimony of Shankar Prasad, he was a witness to the accident and immediately after the accident he asked the name of the driver of the truck and the truck driver disclosed his name to this witness. Thereafter, this witness on his mobile phone dialed number 108 for the emergency ambulance service. After the ambulance came, he accompanied the deceased to the hospital and from the hospital, he on his mobile phone gave a phone call to the family members of the deceased. Though this witness has stated this, the two other witnesses, i.e., the widow and the father of the deceased have not stated a word that Shankar Prasad had informed them about the accident. They have not said a word about receiving a phone call from him. The Claims Tribunal has also found that the First Information Report was lodged by the real brother of the deceased and in this FIR he has stated that in the morning he came to know about the death of his brother and thereafter he had gone to the spot along with other persons including Shankar Prasad. These facts are clearly mentioned in the FIR which have been proved by the claimants themselves. Therefore, the learned Claims Tribunal was perfectly justified in holding that this clearly shows that Shankar Prasad was not an eyewitness because if he was an eyewitness then all the facts would have been depicted in the FIR and would not have come out for

the first time in the testimony before the Court.

4. Having held so, I am clearly of the view that the Learned Claims Tribunal erred in dismissing the entire claim petition on this ground. It is not disputed that the accident happened with truck No.CG 18 H 1019. It is also not disputed that the said truck was being driven by the driver Santosh Padamwar. The driver of the truck Santosh Padamwar was the best witness to depose how the accident happened. For the reasons best known to the claimants, the owner and the insurance company, they did not choose to examine him. Therefore, though the claimants may have produced false witness, the Respondents have chosen not to produce the witness who was admittedly on the spot. Therefore, adverse inference will have to be drawn against the Respondents. The accident occurred in the middle of the night. It occurred on the national highway and since no evidence has been led, I hold that both the drivers are equally responsible for the accident and there is contributory negligence to the extent of 50% by the deceased and by the driver of the truck.
5. Next comes the question with regard to assessment of the compensation. It is alleged that the deceased was a contractor and earning Rs.30,000 – 40,000/- per month. What has been produced on the record is only a document showing that the deceased had some mining licence (Ex.AC-7) in District Jagdalpur. The deceased was also owner of a Maruti Swift Car. Therefore, he must have been earning a handsome amount. Unfortunately, no evidence has been led to show that he was an income-tax payee. However, since it is shown that he had some mining licence and was owner of the Maruti Swift Car, it would not be unreasonable to assess his income at Rs.15,000/- per month and that would bring it within the limits where income tax is not to be paid. Therefore, I assess the income of the

deceased at Rs.15,000/- per month. Since the deceased was aged about 35 years, 50% shall have to be added for future prospects and thereby the income of the deceased works out to Rs.22,500/-. Since in this case the number of dependents are four, 1/4th is deducted for the personal expenses of the deceased which leaves the monthly dependency at Rs.16,875/- per month or Rs.2,02,500/- per year. Since the deceased was aged about 35 years, multiplier of 15 is applied and the compensation works out to Rs.30,37,500/-. In addition thereto, a sum of Rs.12,500/- is awarded for funeral expenses and a sum of Rs.50,000/- to the wife for loss of consortium. Thus, the total compensation works out to Rs.31,00,000/-. However, since I have found that the deceased was guilty of contributory negligence to the extent of 50%, the same is reduced to Rs.15,50,000/-. On this amount, the claimants shall also be entitled to interest @ 9% per annum from the date of filing of the claim petition till payment/deposit of the full amount of compensation. The amount of compensation is apportioned as follows:

Sl. No.	Claimants	Amount to be Disbursed (Rs.)
1	Appellant No.1, Smt. Mamta Gupta (Wife of the Deceased)	5,00,000
2	Appellant No.2, Bharat Prasad Gupta (Father of the Deceased)	50,000
3	Appellant No.3, Smt. Veena Devi Gupta (Mother of the Deceased)	3,00,000
4	Appellant No.4, Miss Jyoti Gupta (Daughter of the Deceased)	3,50,000
5	Appellant No.5, Dev Gupta (Son of the Deceased)	3,50,000
Total =		15,50,000

6. Out of the amount of compensation payable to Appellant No.1, Smt. Mamta Gupta, Rs.1,00,000/- shall be released and the balance

amount shall be kept in a fixed deposit for a period of 5 years at the first instance and the interest accrued thereon shall be paid to her on quarterly basis. As far as the amount payable to Appellant No.2, Bharat Prasad Gupta and Appellant No.3, Smt. Veena Devi Gupta are concerned, that may be released in their favour. The amount payable to Appellants No.4 and 5 shall be kept in a fixed deposit till they attain age of 21 years and thereafter the amount shall be released in their favour by remitting it to their bank accounts. All the claimants shall submit passbooks showing their individual bank accounts before the Claims Tribunal and the Claims Tribunal shall ensure that the amounts are remitted directly into the bank accounts of these claimants. The Respondents, i.e., the driver, owner and the insurer of the truck are jointly and severally held liable to pay the entire amount of compensation, but since the truck was insured, obviously, the Insurance Company will have to pay the entire amount of compensation.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE