

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.1672 of 2008**

United India Insurance Co.Ltd., Through:- Divisional Office, Post Box No.123, Main Road, Korba, District Korba (C.G.).

---Appellant

Versus

1. Smt.Saneema Baghel Wd/o Late Devan Prasad Baghel, aged about 50 years.
2. Kishan Baghel S/o Late Dewan Prasad Baghel, aged about 34 years.
3. Harikishan Baghel S/o Late Dewan Prasad Baghel, aged about 32 years.

All are R/o Gram Baharpur, Post Office & Chowki – Fasterpur, Thana & Tahsil Mungeli, District Bilaspur (C.G.).

4. Kalia @ Kapil Sonkar S/o Santuram Sonkar, aged about 22 years, R/o Saken Gram, Chatan, Thana and Tahsil Mungeli, District Bilaspur (C.G.).
5. Satrugan Sonkar S/o Dhanau, R/o Gram and Post Ghhatan, Thana and Tahsil Mungeli, District Bilaspur (C.G.).

---Respondents

AND**MAC No.43 of 2009**

1. Smt.Saneema Baghel Wd/o Late Devan Prasad Baghel, aged about 50 years.
2. Kishan Baghel S/o Late Dewan Prasad Baghel, aged about 34 years.
3. Harikishan Baghel S/o Late Dewan Prasad Baghel, aged about 32 years.

All are R/o Gram Baharpur, Post Office & Chowki – Fasterpur, Thana & Tahsil Mungeli, District Bilaspur (C.G.).

---Appellants

Versus

1. Kalia @ Kapil Sonkar S/o Santuram Sonkar, aged about 22 years, R/o Saken Gram, Chatan, Thana and Tahsil Mungeli, District Bilaspur (C.G.).
2. Satrugan Sonkar S/o Dhanau, R/o Gram and Post Ghhatan, Thana and Tahsil Mungeli, District Bilaspur (C.G.).
3. United India Insurance Company Limited, through – The Branch Manager, Rajendra Nagar Chowk, Bilaspur (C.G.).

---Respondents

Ms.Chitra Shrivastava, Advocate for Insurance Company.

Shri R.K.Pali on behalf of Shri P.P.Sahu, Advocate for respondent Nos.4 & 5 in MAC No.1672/08 & for respondent Nos.1 & 2 in MAC No.43/09.

Shri Devesh Chandra Verma, Advocate for respondent Nos.1-3 in MAC No.1672/08 & for appellant Nos.1-3 in MAC No.43/09.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

25/10/2017

1. These are the two appeals under Section 173 of the Motor Vehicles Act challenging the award dated 30/09/2008 passed by the Additional Motor Accident Claims Tribunal, Mungeli, District Bilaspur (C.G.) in Motor Accident Claim Case No. 14/2008.
2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has awarded the compensation of Rs.89,500/- with interest @ 7% per annum from the date of application.
3. MAC No.1672/2008 is an appeal preferred by the Insurance Company challenging the liability and MAC No.43/2009 is an appeal preferred by the claimants seeking enhancement.
4. The facts of the case is that, the deceased Devan Prasad Baghel, aged around 60 years while going on a bicycle was hit by a Tractor belonging to the respondent No.5 and which was being driven by the respondent No.4. The said Tractor was duly insured with the appellant/Insurance Company.
5. As a result of the said accident, the deceased succumbed to grievous injuries that he sustained. The Tribunal while passing the award fastened the liability of payment of compensation upon the Insurance Company. It is this award which is under challenge in MAC No. 1672/2008.
6. MAC No.43/2009 is an appeal by the claimants seeking enhancement of the compensation on the ground, that the income assessed by the Tribunal while quantifying the compensation is on the lower side. According to the counsel for the appellants, the accident is of the year 2008 where the minimum wage of a daily wage worker would be more than Rs.100/- per day and therefore under any circumstances the income of the deceased ought to had been assessed by the Tribunal at Rs.3,000/- per month i.e. Rs.36,000/- yearly.

7. So far as the appeal of the Insurance Company is concerned, perusal of the record would show, that the Insurance Company has not led any evidence to support its contention. Neither have the Insurance Company taken the plea of the driver of the offending vehicle not having a valid license at the time of accident in their written statement.

8. In the given circumstances, the finding of the Tribunal does not warrant any interference and the appeal of the Insurance Company deserves to be rejected.

9. So far as the appeal of the claimants is concerned, undoubtedly, the deceased at the time of the accident was aged around 60 years and he was going on his bicycle. The fact that he was going on his bicycle itself shows, that he was a healthy person. In the year 2008, the period of the accident, the minimum income under any circumstances would have been more than Rs.100/- per day and this court therefore does not have any hesitation in assessing the income of the deceased at Rs.36,000/- yearly instead of Rs.15,000/- as assessed by the Tribunal.

10. Thus, accepting Rs.36,000/- as the yearly income of the deceased and deducting 1/3rd from the same towards personal expenses, the remaining amount would be Rs.24,000/- which if multiplied by applying multiplier of 9 as per the judgment of Hon'ble Supreme Court in the case of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009 {6} SCC 121]**, the amount would reach to Rs.2,16,000/-. It is ordered accordingly, that the claimants shall be entitled for the compensation of Rs.2,16,000/- towards loss of dependency.

11. So far as compensation under the conventional head is concerned considering the entire factual matrix of the case this court is of the opinion that, keeping in view the judgment of the Hon'ble Supreme Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors. [2013 {9} SCC 54]**, ends

of justice would meet if the claimants would be granted a lump sum compensation of Rs.1,00,000/- under the conventional head.

12. Thus, the claimants shall be entitled for total compensation of Rs.3,16,000/- instead of Rs.89,500/- as awarded by the Tribunal. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.

13. The appeal of the Insurance Company i.e. MAC No. 1672/2008 stands rejected and the appeal of the claimants i.e. MAC No. 43/2009 stands allowed.

Sumit

**Sd/-
(P. Sam Koshy)
Judge**