

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1469 of 2007

1. Dalel Singh Yadav, S/o Muritram Yadav.

2. Smt. Kali Bai W/o Dalet Singh Yadav

Both are resident of Village Patharra, P.S. Kota, Tah. & District Bilaspur (C.G.)

---- Appellants

Versus

1. Bhupendra Krishna Tamskar, S/o Late K.D. Tamskar, aged about 65 years, R/o Tilak Nagar behind Main Post Officer, Bilaspur (C.G.)

2. Manharan Geer, S/o Jai Geer, aged about 50 years, R/o Village Patharra, Post Kalmeetar, P.S. Kota Distt Bilaspur C.G. Authorized Power of Attorney holder of vehicle owner, Bhupendra Krishna Tamskar,

3. Branch Manager, Bajaj Allianz, Insurance Company Limited, Shiv Mohan Bhavan, Vidhan Sabha Road Pandari, Raipur C.G.

---- Respondents

And

MAC No. 65 Of 2008

- Bajaj Allianz, Insurance Company Limited, through Branch Manager, Shiv Mohan Bhawan, Vidhan Sabha Marg, Pandari, Raipur (C.G.)

---- Appellant

Vs

1. Dalel Singh, S/o Muritram Yadav

2. Smt. Kalibai Yadav W/o Shri Dalel Singh Yadav

Both residents of Village - Patharra, Police Station - Kota, Tehsil - Kota, District - Bilaspur (C.G.)

3. Bhupendra Krishna Tamaskar S/o Late K.D. Tamaskar, aged about 65 years, R/o Village -Tilaknagar, Behind Main Post Office, District - Bilaspur (C.G.) { Owner Of Tranctor No C.G. 10-D/0264 And Trolley No. C.G. 10 -D/0265 }

4. Manharan Gir Power of Attorney Holder, S/o Shri Jai Gir, aged about 50 years, R/o Village – Patharra, Post Kalmitar, Police Station - Kota, Tehsil - Kota, District - Bilaspur (C.G.)

---- Respondents

For Claimants	:	Shri Indrasen Sahu, Advocate
For Insurance Company	:	Shri Ghanshyam Patel, Advocate on behalf of Shri Abhishek Sinha, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice
Judgment on Board

07.02.2017

1. Both these appeals are being disposed of by this common judgment since they both arise out of a common award dated 31.10.2007 passed by the IX Additional Motor Accident Claims Tribunal (F.T.C.) Bilaspur (for short 'the learned Tribunal') in Claim Case No. 49/2006 awarding compensation of Rs.3,38,500/- in favour of the claimants.
2. Briefly stated facts of the case are that the parents of the deceased Ramkumar @ Bhuru Yadav filed a claim petition alleging that the deceased was employed as a tractor driver of Tractor No. CG-10/D/0264 and Trolley No. CG-10/D/0265 by the owner Bhupendra Kirshna Tamaskar and his Manager Manharan Geer. It was alleged that the deceased was being given salary of Rs.100/- per day and daily allowance of Rs.25/- per day, therefore, total income of the deceased was Rs.125/- per day, which works out to Rs. 3,750/- per month or Rs. 45,000/- per annum. In the claim petition, it is alleged that the deceased died because he fell down from the tractor while crossing through a pit on the road. The Insurance company contested the claim on various grounds including that the claim under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the M.V. Act') is not maintainable and also on the ground that since the deceased himself was driving the vehicle in question, he was not entitled to claim compensation under the M.V. Act. The learned Tribunal assessed the income of the deceased at Rs.3,000/- per month, but thereafter did not apply the Scheduled which is applicable under Section 163-A of the M.V. Act. He awarded compensation by taking into consideration the principles laid down under the Workmen's Compensation Act, 1923 (herein after referred to as 'the W.C. Act').

3. The Insurance Company has challenged the award on two grounds. Firstly, since the income of the deceased was more than Rs.40,000/- per month, claim petition under Section 163-A of the M.V. Act was not maintainable. Secondly, it is urged that since the deceased himself was driving the vehicle, no amount of compensation could be claimed and therefore, the Insurance Company cannot be asked to pay compensation for death of the driver who himself may be negligent. Lastly, it is urged that the learned Tribunal has erred in awarding compensation as if he was a judge discharging the duties under the W.C. Act.
4. On behalf of the claimants, an appeal has been filed claiming enhancement of compensation.
5. I am of the considered view that when the income of the deceased claimed by the claimant was more than 40,000/- per annum, the claim petition under Section 163-A of the M.V. Act was not maintainable and in this behalf reference may be made to the judgment of Apex Court in *Deepal Girishbhai Soni and Others v. United India Insurance Co. Ltd., Baroda*, (2004) 5 SCC 385.
6. I am also of the view that the learned Tribunal erred in relying upon Section 4 of the W.C. Act while assessing the compensation in a claim petition filed under Section 163-A of the M.V. Act. It is more than obvious that basic principles of law of compensation under Section 163-A had not been followed. What can be awarded under Section 163-A is only the amount payable under Schedule-II. When a claim petition under Section 163-A of the M.V. Act is entertained, the Tribunal cannot award a penny less or a penny more than what is payable under the Schedule.

7. Having held so, I am clearly of the view that the claimants should not suffer for the fault of the counsel. It is not disputed that the deceased was working as a driver on the tractor. The case of the owner is that the deceased was not a regular driver, but he was hired on short term basis @ Rs. 50/- per day. The owner has not led any evidence in this behalf. I feel that it is a fit case where I should exercise supervisory jurisdiction vested in this Court under Article 227 of the Constitution of India. The claimants were misguided by their counsel to file the claim petition under the M.V. Act. They would have been better advised to file a petition under Section W.C. Act. I say so because even assuming that the income of the deceased was less than 40,000/- then also compensation would not be payable on account of no fault liability because in this case, the deceased himself was driving the vehicle and the accident occurred due to the negligence of the deceased himself. In this behalf reference may be made to the judgment of the Apex Court in *Ningamma & Another v. United India Insurance Co. Ltd.*, AIR 2009 SC 3056.
8. The party engages the counsel who is supposed to advise the party correctly. If the counsel advised the party, they would have been asked to file claim petition under W.C. Act. Since the deceased was a workman and admittedly working as an employee of the owner of the vehicle, the Insurance Company could not escape from its liability under the W.C. Act which itself legally bind even to act under the policy. Section 147 of the M.V. Act clearly provides that any policy of Insurance Company must essentially cover the risk under the W.C. Act in case of driver of the vehicle.
9. In view of the above discussion, I could have dismissed the claim petition and directed the claimant to file petition under W.C. Act.

However, I am of the opinion that it would be very harsh to direct the claimants to file a fresh case in view of the fact that the accident took place on 29.04.2006 and after 11 years sending the claimants back for retrial would be highly unjust and unfair. Therefore, in exercise of supervisory jurisdiction vested in this Court under Article 227 of the Constitution of India, I assess the income of the deceased for payment of compensation under the W.C. Act in which no negligence is required to be proved. All that is required to be proved is that the deceased was a workman and the accident occurred during the course of his duty, which is not disputed in this case.

10. The Tribunal held the income of the deceased to be Rs.3,000/- and 50% of the same has been deducted in terms of Section 4 of the W.C. Act. Since the deceased was aged about 20 years, relevant factor under Schedule IV of the W.C. Act would be 224 and therefore, the compensation payable would be 3,36,000/- as awarded by the Tribunal. On this amount, the claimants shall be entitled to interest @ 12% per annum from the date of accident till payment in terms of Section 4A of the W.C. Act. The entire amount of compensation shall be payable only to the mother since she was dependent on the deceased-workman and father would not be entitled to any compensation unless he has proved that he was dependent on the deceased, which has not been done in the present case. The amount shall be kept in fixed deposit and shall be disbursed only after following procedure laid down under Section 8 of the W.C. Act especially sub-Section (8) thereof.
11. Both the appeals are disposed of in view of aforesaid terms.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE