

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 488 of 2007**

Lalji Shyam S/o Hajari @ Najari Lal Shyam (Tractor owner) R/o village Patharra, Tahsil Marwahi, Distt. Bilaspur (CG).

---- Appellant**Versus**

1. Smt. Gouri Bai , aged about 35 years, caste Gond, Widow of Sumer Singh
2. Prem Singh, aged about 16 years, caste Gond, Minor S/o Sumer Singh,
3. Rai Singh, aged about 12 years, caste Gond, Minor S/o Sumer Singh
No. 2 & 3 through next friend mother Gouri Bai.
4. Rajkunwar, aged 60 years, caste Gond, Widow of Vishal Singh
All are R/o Patharra, Police Station Pendra, District Bilaspur (CG).
5. Shyam Lal Panika S/o Chhotelal Panika, Driver of Tractor R/o Village Patharra, Post Kotmi, District Bilaspur.
6. Insurance Company, Oriental Insurance Co. Ltd. through its Branch Manager, Bilaspur (CG).

---- Respondents**MAC No. 288 Of 2007**

1. Smt. Gouri Bai , aged about 35 years, caste Gond, Widow of Sumer Singh
2. Prem Singh, aged about 16 years, caste Gond, Minor S/o Sumer Singh,
3. Rai Singh, aged about 12 years, caste Gond, Minor S/o Sumer Singh
No. 2 & 3 through next friend mother Smt. Gouri Bai, wife of late Shri Sumer Singh Gond.
4. Smt. Rajkumar, aged 60 years, caste Gond, Widow of Vishal Singh Gond
All are R/o Patharra, Police Station Pendra, District Bilaspur (CG).

---- Appellants**Versus**

1. Shyam Lal Panika S/o Chhotelal Panika, Driver of Tractor R/o Village Patharra, Post Kotmi, District Bilaspur.
2. Lalji Shyam S/o Hajari @ Najari Lal Shyam (Tractor owner) R/o village Patharra, Tahsil Marwahi, Distt. Bilaspur (CG).
3. The Oriental Insurance Co. Ltd. Bilaspur, through the Branch Manager, Bilaspur (CG).

---- Respondents

For Appellant	:	Shri Vimlesh Bajpai (in MAC No.488 of 2007) and Shri Ritesh Verma (in MAC No.288 of 2007), Advocates.
For Insurance Company :		Shri Raj Awasthi and Shri Abhishek Sinha, Advocates.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/09/2017**

1. These are two appeals one preferred by the owner of the offending

vehicle and the other by the claimants, under Section 173 of the Motor Vehicles Act against the award dated 23.01.2007 passed by the Additional Motor Accident Claims Tribunal, Pendra Road (in short, the Tribunal) in Claim Case No.45/2006. Vide the impugned award, the Tribunal in an application filed under Section 166 of the Motor Vehicles Act, has awarded compensation of Rs.1,59,500/- in favour of the claimants.

2. MAC No.488 of 2007 is an appeal by the owner challenging the liability which has been fastened upon the owner exonerating the insurance company. MAC No.288 of 2007 is an appeal by the claimants seeking for enhancement of compensation awarded by the Tribunal.
3. So far as the owner's appeal is concerned, counsel for the appellant submits that the insurance company has been wrongly exonerated as there was no fault on the part of the appellant-owner inasmuch as the owner had taken all due care ensuring that there is no breach of policy conditions, and therefore, the insurance company should have been fastened with the liability instead of liability being fastened upon the owner. He further submits that the Driver also at the time of engagement had a valid licence, therefore, it cannot be said that there was any lapse on the part of the owner. Thus, prayed for modification in the award to the extent that liability of payment of compensation may be shifted upon the insurance company.
4. A perusal of record would show that the findings of the Tribunal was based upon the evidence which have come on record, particularly,

the driver of the offending vehicle namely Shyam Lal Panika, who has categorically deposed that at the relevant point of time, the vehicle was being operated for transportation of Ballast for commercial purposes. This evidence of the driver of the offending vehicle is sufficient evidence to show that there was a breach of policy conditions. In addition, what is also reflected is that, the said driver Shyam Lal had only a learner's licence in his favour and that too was valid for the period from 16.06.2004 to 15.12.2004 and thereafter the licence has not been renewed and the accident occurred after a period of four months from the date of expiry of the learners licence. This further adds to the lapse on the part of the owner in providing the vehicle to be operated by a person who did not have any licence on the date of accident.

5. Thus, in the opinion of this court, no strong case has been made out by the owner for interference with the the impugned award so far as liability is concerned and the appeal of the owner accordingly fails and is rejected.
6. So far as the appeal of the claimants are concerned, the sole ground of challenge by the appellants is the notional income of Rs.1500/- taken by the Tribunal for quantifying the compensation whereas, it ought to have been much more and the award deserves to be suitably enhanced. According to claimants, Rs.1500/- which has been assessed by the Tribunal would make the per day income of the deceased to be only Rs.40/- which by no means can be said to be the minimal wages of an unskilled labour during the said period. He

also submits that the minimum income of a labour at that time was somewhere around Rs.2000/- in a month.

7. Having heard the rival contentions put forth on either side and on perusal of records, this court is in agreement with the contention of the claimant that the minimum income of the unskilled labour during the said period would have been somewhere around Rs.2000/- a month. For all practical purposes, the yearly notional income of the deceased who met with an accidental death in the year, 2005, should have been taken as Rs.24000/-. It ordered accordingly.
8. If 1/3rd of Rs.24000/- is deducted towards personal expenses, the yearly income of the deceased would be Rs.16000/-. If the same is multiplied by applying the multiplier of 15, the compensation payable to the claimants for loss of dependency would be Rs.2,40,000/- instead of Rs.1,50,000/-.
9. Thus, the appeal of the claimants (MAC No.288 of 2007) is allowed to the extent that the claimants shall now be entitled for an additional amount of Rs.90,000/- in addition to what has already been awarded by the Tribunal. Rest of the conditions mentioned in the award shall remain intact.
10. Accordingly, MAC No.488 of 2007 filed by the owner stands dismissed and MAC No.288 of 2007 filed by the claimants stands allowed to the extent indicated hereinabove

sd/-
(P.Sam Koshy)
Judge