

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. No.1125 of 2005

Anandram, aged 27 years, S/o Gajanand Mehhar, R/o Vill. Ranisagar, PS Aarang, Distt. Raipur (C.G.)

---- Appellant

Versus

1. Jhaduram, S/o Firanta Chandrakar, R/o vill. Girra, PS Palaaree, Teh. Balodabazaar, Distt. Raipur (CG)
2. M/s Durga Carrier Pvt. Ltd., by Managing Director, Balodabazaar (C.G.)
3. The New India Insurance Co. Ltd., Branch Office, Civil Line, Balodabazaar, By Divisional Manager, Kutchery Chowk, Raipur (C.G.)

---- Respondents

For Appellant :	Shri Pawan Kesharwani and Shri Anmol Sharma, Advocates
For Respondent No.1 :	No one appears
For Respondent No.2 :	Shri L.C. Dash, Advocate
For Respondent No.3 :	Shri Srikumar Agrawal, Sr. Advocate with Shri Anand Kumar Gupta, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

10/01/2017

1. This appeal under Section 173 of Motor Vehicle Act 1988 is directed against the award dated 29/07/2005 passed by 9th Additional Motor Accident Claims Tribunal (FTC) Raipur in Claim Case No. 36/2005, wherein the claim of appellant was allowed and Rs. 50,000/- has been awarded as compensation.
2. Appellant filed petition under Section 166 of the Motor Vehicles

Act claiming that his mother-deceased Smt. Bhangnan Bai expired in a road accident on 19/03/2004. The accident was caused by when she was travelling in jeep No. C.G. 04 ZA 2091 which collided with truck No. C.G. 04 G 3904 within the jurisdiction of Police Station, Kharora. Respondent No. 1 was the driver of the truck, the respondent No. 2 is the registered owner of the truck and respondent No. 3 was the insurer in the relevant period arraying them as party, claim was preferred. The appellant claimed that he was dependent of deceased Bhangnan Bai. He claimed Rs. 15 Lakhs for loss of dependency, Rs. 5 Lakhs for mental agony and Rs.5 Lakhs for lack of maternal love and affection, in total claimed of Rs. 25 Lakhs was made.

3. Respondents No. 1 & 2 denied all the averments made in the claim application and stated that the age of deceased at the time of her death was 70 years. She had no earning of her own, hence appellant was not entitled for loss of dependency and amount in other claims.

4. Respondent No. 3 in reply after denying all the averments in claim application, pleaded that appellant was not entitled to any compensation. In the alternative it was pleaded that respondent No 3 was exonerated due to breach of policy condition, prayed for rejection of claim.

5. The tribunal framed issues, after giving opportunities to lead evidence to both the sides and hearing arguments the award dated 29/07/2005 was passed, in which it was held that on 19/03/2004 non-applicant No. 1 while driving truck C.G.04 G 3904 rashly and negligently, collided the truck with jeep No. CG ZA 2091 and causing the

accident, which resulted in death of Bhangan Bai was found proved. Considering on the issue of liability the finding was given that the respondents were jointly and severally liable for payment of compensation in the same issue. The finding on question of entitlement was also decided and accordingly rejecting the claim of appellant as made in the claim petition, only Rs. 50,000/- was awarded as compensation for loss of estate, mental agony etc.

6. This appeal has been brought only for enhancement of the compensation amount. The grounds urged are these, that the Tribunal below failed to appreciate the evidence led by the appellant, he had been entitled for loss of dependency. A petty amount of Rs.50,000/- was awarded which is a minimum statutory amount under no fault liability clause. The income of deceased was proved by the appellant which was not appreciated. On the basis of proof of income and that the age of deceased was 60 years at least 1,44,000/- could have been awarded for loss of dependency along with 18 % interest. It is prayed that the appeal be allowed and the amount of compensation be enhanced.

7. It is submitted by counsel for the appellant that the learned Tribunal has failed to appreciate the evidence led by appellant, about the income of deceased and his dependency without assigning any proper reason, hence the finding of the Tribunal is erroneous, which should be interfered with and on the basis of the same evidence the claim in favour of appellant be decided and compensation be enhanced.

8. Counsel for the respondent No. 2 has opposed the ground in appeal and arguments submitted before this Court, that the award

passed by the learned Tribunal is just and proper. There is no need for any interference. Similarly, counsel for respondent No. 3 has argued and submitted that the finding given by the learned Tribunal is proper. Appellant who is himself an adult and appears to have his own source of income cannot be claim for dependency for death of his mother.

9. The only question is on the point of enhancement of compensation, appellant was of 27 years of age when he filed the petition. Nowhere in this appeal he has stated that he himself is unable to earn and hence for this reason he was dependent on deceased. In the statement before the Tribunal, Anandram AW-1 has stated that deceased was a vegetable seller and from this she earned Rs. 100 – 150 every day. She contributed her earning in to the family expenses. In cross-examination he has denied adverse at this suggestions given and remained firm on this statement that his mother used to work as vegetable seller. On the point of earning, this is the only evidence, no evidence was led by the non-applicants/respondents to rebut the evidence of appellant.

10. The Tribunal considered this evidence and has rejected it just for the reason that the age of deceased was 70 years and that the appellant himself was not dependent on the deceased. It is true that the appellant cannot be considered as dependent but looking to view laid down by Apex Court in **Manjuri Bera v. Oriental Insurance Company Ltd., AIR 2007 SC 1474**, he is entitled for compensation.

11. The evidence regarding the income of deceased which stands un-rebutted, this fact cannot be ignored. The statement of appellant that

deceased contributed her earnings in the family expenses, which was a benefit derived by the appellant and his family from deceased which has to be accounted for. Considering that deceased earned an average income of Rs.100/- per day by selling vegetables, her monthly income on the basis of average 25 working days can be worked as Rs. 2500/- and yearly income of Rs. 30,000/-. In this case percentage of deduction shall be 50%, after that deduction remaining amount of income Rs.15000/- per year shall be taken into account for calculation of benefits of the appellant. On the basis of guidelines given in **Sarla Verma v. Delhi Transport Corporation & Anr., AIR 2009 SC 3104**, multiplier of 5 shall be applied in this case, with this multiplicand on multiplying the yearly benefit of appellant, Rs. 75,000/- shall be the amount which could be regarded as just and proper compensation to be awarded for loss of benefits to the appellant. Apart from that Tribunal has failed to award any compensation for funeral expenses for which Rs.25,000/- is a suitable amount. In this manner appellant is entitled to be compensated with Rs. 1 Lakh.

12. Hence, for the reasons aforementioned and on the basis of finding arrived at, this appeal is allowed in part. The amount of compensation awarded by the Tribunal in the impugned award is enhanced by Rs. 1 Lakh. Rest of the findings of the impugned award are maintained as it is. Any amount deposited earlier shall be adjusted with the amount of compensation awarded in this appeal. This appeal is disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE