

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 10 of 2016

The Oriental Insurance Company Limited Through Divisional Manager,
Divisional Office, First Floor, Shivnath Complex, G. E. Road, Supela
Bhilai, Tehsil and District Durg Chhattisgarh

(Insurer of Vehicle Hundai Varna Car No. C G 07 M A 9576)

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Versus

1. Smt. Rajni Balaia, W/o Late Shri Sharad Kumar Balaia, Aged about 47 Years, R/o. Street No. 38, Quarter No. 1/C, Sector 08, Bhilai, Tehsil and District Durg Chhattisgarh
2. Sudhanshu Balaia, S/o. Late Shri Sharad Kumar Balaia, Aged about 20 Years, R/o. Street No. 38, Quarter No. 1/C, Sector 08, Bhilai, Tehsil and District Durg Chhattisgarh,
3. Ku. Aausi Balaia, D/o. Late Shri Sharad Kumar Balaia, Aged about 15 Years, Through Natural Guardian Mother Smt. Rajni Balaia, W/o Late Shri Sharad Kumar Balaia, R/o Street No. 38, Quarter No. 1/C, Sector 08, Bhilai, Tehsil and District Durg Chhattisgarh

.....Claimants,

4. Varun Tyagi, S/o. Shri Ashok Kumar Tyagi, Aged About 29 Years, R/o M.I.G. 1/56, Aamadi Nagar Hudko, Bhilai, Tehsil and District Durg Chhattisgarh

(Driver of Vehicle Hundai Varna Car No. C G 07 M A 9576)

5. Jaisawal Niko Industrial Limited R/o 106, Light Industrial Area, Bhilai, Tehsil and District Durg Chhattisgarh

(Registered owner of vehicle Hundai Varna Car No. CG 07 M A 9576)

For Appellant : Mr. Sudhir Agrawal, Advocate.

For Respondent Nos. 1 to 3 : Mr. Utsav Mahishwar, Advocate

For Respondent Nos 4 & 5 : Mr. Shikhar Sharma, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

02.02.2018

1. This appeal arises out of the award dated 05-10-2015 passed by 6th Additional Motor Accident Claims Tribunal (for short the "Tribunal") Durg in Claim Case No. 171/2013 awarding a compensation of Rs. 38,53,640/- in favour of the respondents No. 1 to 3 (claimants) for the death of Sharad Kumar Balaia.
2. Facts of the case in brief is that, on 08-06-2013 deceased Sharad Kumar Balaia was driving scooter bearing registration No. M.P. 21-A/3039 which was dashed by Verna Car bearing registration No. C.G. 07 MA/9576 and got bodily injured. He was admitted in the hospital of Bhilai Steel Plant, Sector-09, and succumbed to injury. The matter was reported to Police Station Bhilai Nagar, against the driver of the vehicle i.e. respondent No. 4 wherein Crime No. 307/2013 for commission of offence under Section 304-A of the IPC was registered. A claim petition was filed by three claimants namely Rajni Balaia (wife of the deceased), Sudhanshu Balaia (son of the deceased) and Ku. Aausi Balaia (daughter of the deceased), who happen to be the legal heirs of the deceased. The deceased was working as MT (Lab.) S-11, in Bhilai Steel Plant Hospital, at Sector-09, whose monthly salary Rs. 53,279/- per month and claimant were dependent upon him.
3. Pleading of the claimants/respondents have, however, been denied by the appellant/insurance company, respondent No. 4 (the driver of offending vehicle) and respondent No. 4, (owner of the car).
4. After evaluating the evidence available on record, the Tribunal has awarded the compensation of Rs. 38,53,640/- along with interest @ 6 %

per annum in favour of the claimants/respondent Nos. 1 to 3 assessing the age of the deceased as 55 year. Hence this appeal.

5. Learned counsel for the appellant submits that the as per version of Varun Tyagi (NAW-1) the deceased was driving scooter negligently, therefore, Insurance company is not liable to pay compensation. He submits that Deepak Sahane (AW-1) is not an eye-witness of the incident and the findings arrived at by the Tribunal on the basis of statement of Deepak Sahane (AW-1) is not in the fitness of factual matrix of the case. Learned counsel for the appellant submits that the Tribunal has awarded Rs. 1,00,000/- for consortium and Rs. 1,00,000/- for love and affection is on higher side and as per law laid down in the matter of **Ramilaben Chnubhai Parma and others vs. National Insurance Co. Ltd. and others 2014 ACJ 1430**, age of the deceased was 55 years, therefore, multiplier of 5 ought to have been applied for calculating total compensation but the Tribunal applied multiplier of 9 which is not permissible.

6. On the other hand, supporting the impugned award it has been argued by counsel for the respondent Nos. 1 to 3 that the calculation of the tribunal is well founded and based on the evidence available on record and not liable to be modified.

7. Heard counsel for the parties and perused the documents on record.

8. In a motor accident claim case, what is important is that, the compensation to be awarded by the Tribunal should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

9. Now we shall examine as to whether the compensation is awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

10. Deepak Sahane (AW-1) is the eye-witness account to the incident, while Varun Tyagi (NAW-1) is the driver of the offending vehicle. As per evidence of Deepak Sahane (AW-1) on 08-06-2013 he was going to Sector-08 from his house. When he reached near High School Square of Sector-08, he saw that one Verna Car bearing registration No. C.G. 07 MA/9576 dashed so powerful to one scooter and the person who was sitting in the scooter was thrown out of the scooter at a large distance. He stopped his motorcycle and found that the injured was father of one Sudhanshu Balaia, who is friend of this witness and residing in Sector-08 of his locality. Version of this witness is unshaken during the cross-examination and nothing could be elicited in favour of other side. Version of this witness is supported by Sudhanshu Balaia (AW-2).

11. Varun Tyagi was driver of the offending vehicle at the time of incident and as per his version the deceased was driving the scooter negligently and dashed against his car.

12. Now, the point is whether the version of Deepak Sahane should be accepted or the version of Varun Tyagi should be accepted. Varun Tyagi, was driver of the offending vehicle at the time of incident. Section 134 of the Motor Vehicle Act 1988, cast duty on driver of vehicle, the said provision may be read as under;-

134. Duty of driver in case of accident and injury to a person.-
When any person is injured or any property of a third party is damaged, as result of an accident in which a motor vehicle is

involved, the driver of the vehicle or other person in charge of the vehicle shall-

(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, [by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities], unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause(a), at the nearest police station as soon as possible, and in any case within twenty four hours of the occurrence;

13. Varun Tyagi was under obligation to inform about the accident to the nearest Police Station but has flouted the provisions of Motor Vehicle Act as mentioned above and not informed the police authorities about the accident. Again, in his written reply before the Tribunal has denied the factum of the incident. Driver has not performed his duty and his defense was plain denial of the accident. His evidence is contrary to pleading and looking to his conduct about the incident it can be inferred adversely against him that he was driving vehicle negligently. Contrary to that Deepak Sahane (AW-1) reported the incident to Police Station as per Ex.P-2, at Police Station Bhilai Nagar in which it is clearly mentioned that this witness is the eye-witness account to the accident and he is stable

since day one of the incident on the point of being eye-witness of the incident and deposed on the same line before the tribunal.

14. This Court is of the view, that respondent No. 4, was driving the vehicle negligently at the time of incident. Respondent No. 5 is owner of the vehicle vicariously liable and since the appellant has indemnified, it is under obligation to pay the compensation as per law of land and as per record available on the date of incident. The deceased was aged about 55 years and on the basis of guidelines/principles adopted in the case of **Sarla Verma V. Delhi Transport Corporation and another -(2009) 6 SCC 121**, multiplier of 9 would be applicable.

15. S.D. Patel (AW-3) was working as Section Officer in the Medical Department of Bhilai Steel Plant. He deposed in his deposition that the deceased received gross income of Rs. 53,279/- in the month of May, 2013, after deducting 1/3 expenses of the deceased, the Tribunal calculated Rs. 30,758/- per month the dependency of the respondents No.1 to 3. The Tribunal awarded the amount as mentioned above which cannot be termed as on higher side especially when the tribunal has not awarded any amount for future prospect.

16. It is contented on behalf of the appellant that the amount awarded for consortium and for love and affection is on higher side. He placed reliance in the matter of **Ramilaben Chnubhai Parma and others vs. National Insurance Co. Ltd. and others 2014 ACJ 1430**.

17. Whatever amount mentioned in Second Schedule of Motor Vehicle Act for compensation under Section 163 A of the Motor vehicle Act 1988 is not applicable in a case filed under Section 166 of the Motor Vehicle Act. After about 30 years of enactment of the Act, price index is very high and

award of Rs. 1,00,000/- for consortium and Rs. 1,00,000/- for love and affection cannot be termed as on higher side. The award of the Tribunal is based on evidence of eye-witness/certificate of salary and other relevant documents and it is not liable to be modified. Accordingly, the appeal fails and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Santosh