**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 494 of 2018**

1. Toman Kumar Raut S/o Narad Raut Aged About 25 Years R/o Village Hirri, Yadav Para, P.S. Bori, Tahsil Damdha, District Durg, Chhattisgarh (Driver),
2. Halalkhor Patkar S/o Fagua Patkar Aged About 70 Years R/o Village Belaudi, P.S. Pulgaon, Tahsil And District Durg, Chhattisgarh (Owner),

**---- Appellants**
**Claimants**

**Versus**

1. Smt. Sebasingh Rajput W/o Late Goverdhansingh Rajput Aged About 30 Years
2. Rudrapratap Singh Rajput S/o Late Goverdhansingh Rajput Aged About 5 Years Minor Through Natural Guardian Mother Smt. Sebasingh Rajput,
3. Smt. Subadhra Rajput W/o Gulabsingh Rajput Aged About 60 Years

All R/o Village Rauta, P.S. Bori, Tahsil Damdha, District Durg, Chhattisgarh (Claimants),

**4.** United India Insurance Company Limited Through Branch Manager, Branch Office, Paras Complex, In Front Of Gurudwara Station Road Durg, District Durg, Chhattisgarh (Insurer),

**---- Respondent**

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| For Appellants | : | Mr. P.R. Patankar, Advocate. |
| For Respondents No.1 to 3 | : | Mrs. Shailja Shukla, Advocate. |
| For Respondent No.4 | : | Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Adv. |

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**MAC No. 657 of 2018**

1. Smt. Sebasingh Rajput W/o Late Goverdhansingh Rajput Aged About 30 Years Damdha Distt. Durg (CG)
2. Rudrapratap Singh Rajput S/o Late Goverdhansingh Rajput Aged About 5 Years (Minor Through Natural Guardian Mother Smt. Sebasingh Rajput)
3. Smt. Subadhra Rajput W/o Gulabsingh Rajput Aged About 60 Years

All R/o Village Rauta, P.S. Bori, Tahsil Damdha District Durg, Chhattisgarh (Claimants),

**---- Appellants**

**Versus**

1. Toman Kumar Raut S/o Narad Raut Aged About 25 Years R/o Village Hirri, Yadav Para, P.S. Bori, Tahsil Damdha District Durg, Chhattisgarh (Driver)

2. Halalkhor Patkar S/o Fagua Patkar Aged About 70 Years R/o Village Belaudi, P.S. Pulgaon, Tahsil And District Durg, Chhattisgarh (Owner)
3. United India Insurance Company Limited Through Branch Manager, Branch Office Paras Complex, In Front Of Gurudwara Station Road Durg, District Durg, Chhattisgarh (Insurer).

**---- Respondent**

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|---|---|---|
| For Appellants/claimants | : | Ms. Shailja Shukla, Advocate. |
| For Respondents No.1&2 | : | Mr. P.R. Patankar, Advocate. |
| For Respondent No.3 | : | Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Adv. |

**Hon'ble Shri Gautam Chourdiya, J**

**Judgment On Board**

**04/10/2018** :

As both these appeals arise out of the award dated 23.1.2018 passed by III Additional Motor Accident Claims Tribunal, Durg (in short “the Tribunal”) in Claim Case No.44/2016, they are being disposed of by this common judgment.

02. Facts of the case in brief are that on 19.3.2016 at about 7 pm the deceased Goverdhan Singh Rajput was going on his Activa Motor Cycle bearing No.CG 07/AE/6507 when he was dashed by vehicle Tata D.I. bearing registration No. CG 07 CA 5108 which was being driven by non-applicant No.1 Toman Kumar Raut in a rash and negligent manner. As a result thereof, the deceased suffered grievous injuries and succumbed to the same on the way while being taken to hospital. The claimants filed an application under Section 166 of the Motor Vehicles Act and claimed compensation of Rs.49.45 lacs under various heads. However, the Tribunal by the impugned award granted Rs.8,76,400/- as compensation with interest @ 6% p.a. from the date of application

till realization, fastening the liability on the driver and owner of the offending vehicle to satisfy the award while exonerating the insurance company on the ground that there was no fitness certificate of the offending vehicle at the relevant time.

03. The claimants have filed appeal (MAC No.657/2018) seeking enhancement of the compensation whereas the driver & owner have challenged the award by filing appeal (MAC No.494/2018) on the point of liability.

04. **MAC No.494/2018:** The only issue to be considered in this appeal whether the Tribunal was justified in exonerating the insurance company for want of fitness certificate of the offending vehicle?

05. The Hon'ble Supreme Court in the case of ***Rekha Jain Vs. National Insurance Co. Ltd. (2013) AIR SCW 4597*** has held as under:

> "30. If we permit the insurer to take any other defence other than those specified in sub- section (2) of Section 149, it would mean we are adding more defences to the insurer in the statute which is neither found in the Act nor was intended to be included.
>
> 16. For the aforesaid reasons, we are of the view that the statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of the 1988 Act and not more and for that reason if an insurer is to file an appeal, the challenge in the appeal would confine to only those grounds."

06. This Court also in the matters of ***National Insurance Company Ltd. Vs. Ghanaram Sahu and others, 2018(2) CGLJ 75*** relying upon the decision in *Rekha Jain* (supra) has held that if the offending vehicle does not have the fitness certificate, the same cannot be a ground for exoneration of the insurance company from the liability to satisfy the award. Thus, the appeal preferred by the driver & owner is allowed and the finding of the Tribunal regarding exoneration of the insurance company on the ground of fitness certificate is set aside.

07. **MAC No.657**: Considering the overall evidence available on record, the nature of job of the deceased and the price index at the relevant time, this Court finds that the income of the deceased assessed by the Tribunal at Rs.4500/- per month is on lower side and can safely be taken at Rs.6000/-. Thus, in view of the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680,*** claimants are held entitled for compensation in the following manner:

| **Sl. No.** | **Heads** | **Calculation** |
|---|---|---|
| 01. | Income of the deceased @ Rs.6000/- per month. | Rs.6000 x 12 = Rs.72,000/- per annum |
| 02. | 40% of (i) above to be added towards future prospects | (72,000 + 28,800) = Rs.1,00,800/- |
| 03. | 1/3rd deduction towards personal and living expenses of the deceased | (1,00,800- 33,600) = Rs.67,200/- |
| 04. | Multiplier of 16 to be applied | Rs.67,200 x 16 = Rs.10,75,200/- |

| | | |
|---|---|---|
| 05. | Towards loss of estate, loss of consortium and funeral expenses | Rs.70,000/- |
| | **Total compensation** | **Rs.11,45,200/-** |

Since the Tribunal has already awarded Rs.8,76,400/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,68,800/- with interest @ 6% per annum from the date of application till realization.

08. In the result,

(i) MAC No.494/2018 preferred by driver & owner of the offending vehicle is allowed. The finding of the Tribunal exonerating the insurance company from the liability of paying compensation to the claimants is hereby set aside and it is held that the insurance company, driver & owner of the offending vehicle are jointly and severely liable for paying compensation to the claimants.

(ii) MAC No.657/2018 preferred by the claimants is allowed in part and they are held entitled for additional compensation of Rs.2,68,800/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award in respect of disbursement of the compensation shall remain intact.

Sd/

**(Gautam Chourdiya)**

**Judge**

Khan