

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 568 of 2018**

1. Smt. Asha Bai W/o Swamidayal Jaiswal, Aged About 42 Years
(Husband Name Is Wrongly Mentioned)
2. Swamidayal Jaiswal, S/o Late Ramsahay Jaiswal, Aged About 46
Years

Both are Residence at Mohlainbhata Katghora, P. S. And Tahsil
Katghora, Dist. Korba, Chhattisgarh.

----Appellants/Claimants**Versus**

1. Kashiram S/o Shyamnarayan, Aged About 47 Years R/o Banjari
District Rohtas, Bihar, Present Address Through Punjab
Roadways Plot No. 41G/8 T. P. Nagar Hathkhoj, Bhilai, Dist.
Durg, Chhattisgarh. (Driver Of The Vehicle).
2. Jaswant Singh, S/o Prem Singh, R/o Punjab Road Ways
Hathkhoj, Bhilai, Dist. Durg, Chhattisgarh. (Owner Of The
Vehicle)
3. The New India Assurance Co. Ltd., Through Branch Manager, T.
P. Nagar, Dist. Korba, Chhattisgarh. Insurer.

---- Respondents

For Appellants	Shri P.K. Tulsyan, Advocate.
For respondent No.3	Shri Qamrul Aziz, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Order On Board

14/11/2018

1. This is claimants' appeal for enhancement of compensation
awarded by learned Additional Motor Accidents Claims
Tribunal, Katghora, District Korba C.G. (for short 'the
Tribunal') in claim case No. 177/2016 vide award dated

26.02.2018.

2. Along with appeal, the appellants have also filed an application (I.A.No.01) under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 seeking permission of this Court to allow the appellants to place on record the additional evidence.
3. As against the compensation of Rs.25,80,000/- claimed by the appellants/claimants by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of deceased Satyanarayan Jaiswal in the motor accident on 01.10.2016, the Tribunal awarded a sum of Rs.7,73,000/- as compensation along with interest @ 7% per annum from the date of claim application till its actual payment.
4. The Tribunal, on a close scrutiny of evidence led by the parties, held that the accident had occurred due to rash and negligent driving of Truck bearing registration No. CG07-CB-1255 by its driver – Kashiram, i.e., respondent No.1; the deceased Satyanarayan Jaiswal sustained severe injuries on various parts of the body, died on the spot in the said accident; respondent No.3/the New Insurance Assurance Company Limited is not liable for payment of compensation as the Driver of the offending vehicle was not having valid and effective driving licence; assessed and awarded aforesaid sum as compensation in favour of the

appellants/claimants, fastening liability on the owner of the vehicle/respondent No.2.

5. The appeal filed by the appellants as well as the application (I.A.No.01) under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 has been jointly taken up for disposal.
6. Learned counsel for the appellant submits that the Tribunal has awarded compensation on much lower side by wrongly taking the income of the deceased as Rs.4,000/- whereas the deceased being a Computer Operator was earning Rs.8,000/- per month. The Tribunal has also erred in assessing the age of the deceased and likewise in awarding amount under the conventional heads.

This apart learned counsel for the appellant submits that the Tribunal was not justified in holding that the Driver of the offending vehicle was not having a valid and effective driving licence, whereas from perusal of the record of criminal case, it is evident that police had seized the driving licence of the driver and other relevant documents. The appellants along with their application I.A. No.1 have also filed the copy of seizure memos as well as driving licence of the Driver Kashi Ram which shows that the driver was having a valid and effective licence to drive the offending vehicle on the date of accident.

7. On the other hand, learned counsel appearing for the

respondent No. 3/The New India Assurance Company Ltd. supported the award.

8. I have heard learned counsel appearing for the parties and perused the record of the Tribunal as well as award impugned.
9. As regards I.A. No.1, the documents sought to be brought on record appear to be relevant for the purpose of adjudication of the dispute between the parties. Therefore, the said application is allowed and the documents marked as Annexure I-1 i.e. seizure memos and driving licence of the driver respondent No.1 are taken on record.
10. Considering the facts and circumstances of the case, the reason assigned by the Tribunal for exonerating the Insurance company i.e. non-production of the driving licence of the driver, the additional documents filed by the appellants in this appeal i.e. seizure memos and driving licence which have already been taken on record, which *prima facie* shows that the driver was having a valid and effective driving licence on the date of accident to drive the offending vehicle, this Court is of the opinion that the matter needs to be remanded for decision afresh at the end of the Tribunal.
11. For the reasons mentioned herein above, the appeal is allowed, the award impugned is set aside and the matter is remitted back to the concerned Tribunal to decide the claim petition afresh on its own merits, after affording full opportunity of hearing to the parties, as expeditiously as possible, preferably within a period of

6 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Tribunal on 10th December, 2018.

12. Needless to mention the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any.
13. Record of the Tribunal be sent back forthwith.
14. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh