

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 94 of 2017

1. Smt. Rajkumari Baghel W/o Late Mohan Lal Baghel, Aged About 28 Years
2. Ku. Laxmi Baghel D/o Late Mohan Lal Baghel, Aged About 7 Years
3. Kailash Baghel S/o Late Mohan Lal Baghel, Aged About 5 Years
4. Ku. Kusum Baghel Aaush D/o Late Mohan Lal Baghel, Aged About 1 Years
5. Shri Daya Das Baghel W/o Late Guharam Baghel, Aged About 58 Years
6. Smt. Hira Bai Baghel @ Hiro Bai W/o Shri Daya Das Baghel, Aged About 55 Years

Appellants No. 2 to 4 being minor through legal guardian Mother Smt. Rajkumari Baghel.

All R/o Market Chowk, Khamtarai, Raipur, Thana Khamtarai, Raipur Distt. Raipur (CG)

**---- Appellants
claimants**

Versus

1. Om Prakash Pal S/o Bala Ram, Aged About 34 Years R/o Village Suhela, Near Tigdda Chowk, Thana Suhela District Balaoda Bazar, ChhattisgarhDriver Of The Offending Vehicle Truck No. C.G.04/ J.B./4419
2. M/s Satayam Stone, Through Manager, Address Village- Sohela Thana Suhela, District Balaoda Bazar, ChhattisgarhRegistered Owner Of The Offending Vehicle Truck No. C.G.04/J.B./4419.
3. Shri Ram General Insurance Company Private Limited, Through Branch Manager, Address 4th Floor Maruti Heights G.E.Road Mohba Bazar Raipur, ChhattisgarhInsurer Of The Offending Vehicle Truck No. C.G.04/ J.B./4419.

---- Respondents

For Appellant	:	Shri AL Singroul, Advocate.
For Respondent No.3	:	Shri Deepak Gupta, Advocate.

MAC No. 1569 of 2016

- Shri Ram General Insurance Co. Ltd. Through Branch Manager, Address- Fourth Floor Maruti Heights G.E.Road Mohaba Bazar Raipur, ChhattisgarhInsurer Of Truck C.G.04/ J B/4419, Chhattisgarh

---- Appellant

Versus

1. Smt. Rajkumari Bhagel W/o Late Mohan Lal Bhagel, Aged About 28 Years

2. Ku. Laxmi Bhagel D/o Late Mohan Lal Bhagel Aged About 7 Years
3. Kailash Bhagel S/o Late Mohan Lal Bhagel, Aged About 5 Years
4. Ku. Kusum Bhagel D/o Late Mohan Lal Bhagel, Aged About 1 Years
5. Shri Dayadas Bhagel S/o Late Shri Guha Ram Bhagel, Aged About 58 Years
6. Smt. Herabai Bhagel @ Herobai W/o Shri Dayadas Bhagel, Aged About 55 Years

Minor through Nos. 2, 3 & 4 natural guardian mother Rajkumari Baghel,

All R/o Bajar Chauk, Khamtarai, Raipur, Thana Khamtarai, Raipur Distt. Raipur (CG) --- claimants

7. M/s Satyam Stone, Through Branch Address Gram Sahela Thana Suhela Distt. Balaudabazar, ChhattisgarhOwner Of Truck C.G.04/ J B/4419

---- Respondents

For Appellant	:	Shri Deepak Gupta, Advocate.
For Respondents/claimants	:	Shri A.L. Singroul, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

13/11/2018

As both these appeals arise out of common award dated 29th August, 2016 passed by 6th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.355/2015, they are being disposed of by this common judgment.

02. By the impugned award the Tribunal has granted a total compensation of Rs.10.45 lacs in favour of the claimants with interest @ 6% per annum from the date of application till realization fastening the liability on non-applicant No.3/insurance company.

03. Claimants have filed the appeal MAC No.94/2017 seeking enhancement of the compensation whereas insurance company has filed appeal MAC No. 1569/2016 challenging liability on the sole ground that at the time of accident the deceased was drunk and as such himself responsible for the accident. The insurance company has also challenged the quantum of compensation.

04. As per averments in the claim petition, on 14.4.2015 deceased

Mohan Lal Baghel, aged 32 years, earning Rs.400/- per day, along with one Sushil Kumar Diwaker was going on his bicycle from Village Hathbandh to Village Sitapar when his bicycle was dashed by truck bearing No. CG 04 JB 4419, which was driven in a rash and negligent manner by non-applicant No.1 and as a result thereof, both Mohal Lal Baghel and Sushil Kumar Diwaker died on the spot.

05. On claim petition being filed by the claimants under Section 166 of Motor Vehicles Act claiming total compensation of Rs.51.50 lacs, the Tribunal by the impugned award granted compensation as mentioned above, fastening liability on non-applicant No.3/insurance company to satisfy the award.

06. **MAC No.94/2017**: Learned counsel for the appellants submits that the Tribunal has erred in assessing monthly income of the deceased on notional basis at Rs.4000/- whereas he was earning Rs.400/- per day and as such, the compensation is required to be enhanced.

07. **MAC No. 1569/2016**: Learned counsel for the appellant/insurance company submits that the Tribunal has committed illegality in fastening liability on the insurance company whereas from the evidence available on record it stands proved that the deceased was in drunken condition at the time of accident and as such, he was himself responsible for the accident. He further submits that the Tribunal has granted compensation on much higher side without proper evidence and therefore, the same is liable to be reduced suitably.

08. Heard learned counsel for the parties and perused the material on record.

09. As regards enhancement of compensation, considering the age of the deceased i.e. in between 30-35 years, nature of his job as also the minimum wages at the relevant time, his monthly income can safely be taken at Rs.6000/-. Therefore, in view of decision of the Hon'ble Apex Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*** and ***Sarla Verma and others Vs. Delhi Transport Corporation, (2009) 6 SCC 121***, the claimants are

held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation
01.	Income of the deceased @ Rs.6000/- per month.	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.	1/4th deduction towards personal and living expenses of the deceased	(1,00,800-25,200) = Rs.75,600/-
04.	Multiplier of 16 to be applied	Rs.75,600 x 16 = Rs.12,09,600/-
05.	Towards conventional heads	Rs.70,000/-
	Total compensation	Rs.12,79,600/-

Since the Tribunal has already awarded Rs.10.45 lacs/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,34,600/- with interest @ 6% per annum from the date of application till realization.

10. So far as appeal of the insurance company is concerned, there is no substance in this appeal. Though from the evidence on record it appears that the deceased was drunk on the date of incident, as per postmortem report some alcohol was found in his stomach but there is nothing on record which could suggest that the deceased was drunk to such an extent that he himself was responsible for the accident or contributed to the cause of accident. Being so, merely on the ground of deceased having consumed alcohol, it cannot be held that he was negligent or responsible for the accident.

11. As regards the quantum of compensation challenged by the insurance company, this Court has already considered the same while deciding appeal of the claimants (MAC No.94/2017) and as such, the appeal preferred by the insurance company being without any substance is liable to be dismissed.

12. In the result:

- MAC No.94/2017 filed by the claimants is allowed in part. The claimants are held entitled for additional compensation of Rs.2,34,600/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.
- MAC No.1569/2016 filed by the insurance company being without any merit is hereby dismissed.

Sd/

(Gautam Chourdiya)

Judge