

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 315 of 2013**

1. Uttam Mandal S/o Late Khokhan Mandal Aged About 25 Years R/o 18 Block, Mana Camp, P.S. Mana Camp, Distt. Raipur, Chhattisgarh
2. Smt. Shipra Yadav W/o Dinanath Yadav Aged About 27 Years R/o 18 Block, Mana Camp, P.S. Mana Camp, Distt. Raipur C.G.
3. Smt. Sapna Mandal W/o Varun Mandal Aged About 20 Years R/o 18 Block, Mana Camp, P.S. Mana Camp, Distt. Raipur C.G.

----Appellants/Claimants**VERSUS**

1. Rajesh Kumar Tandan S/o Krishna Gopal Tandan Aged About 22 Years R/o Sedikhedi, P.S. Mandir Hasaud, Tah. And Distt. Raipur C.G.
2. Sanjay Chelak S/o Sukh Nandan Chelak R/o Sedikhedi, P.S. Mandir Hasaud, Tah. And Distt. Raipur C.G.
3. Tarak Majumdar S/o Prafilal Majumdar Aged About 35 Years R/o Block No. 18/09, Mana Camp, P.S. And Post Mana Camp, Distt. Raipur C.G.,

-----Respondents/Non-applicants No. 1,2 & 3

For Appellants	:	Mr. Pankaj Singh, Advocate on behalf of Mr. Pawan Kesharwani, Advocate
For Non-applicants	:	Mr. Vivek Tripathi, Advocate on behalf of Mr. Awadh Tripathi, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Judgement on Board****23/08/2019**

1. The appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act challenging the impugned award dated 29/02/2012 passed by 5th Additional Motor Accident Claims Tribunal, Raipur C.G. in Claim case No. 105/2011, whereby learned Claims Tribunal allowed the claim application in part and awarded Rs. 25,000/- as compensation alongwith interest @ 9% p.a. from the date of filing of the claim application.
2. Brief facts relevant for disposal of this appeal are that on 15.02.2009, deceased

Gautam Mandal was traveling on motor cycle bearing No. CG-04-CY-8925 and going to Mandir Hasaud from Mana camp, when he reached near village Chherikhedi at that relevant time, one Tata Magic bearing No. CG.04.T.3810 (hereinafter "the offending vehicle"), driven by non-applicant No. 1/Rajesh Kumar Tandan dashed the motor cycle and caused accident. In the aforementioned accident deceased Gautam Mandal suffered severe injuries over his person, he was taken to Ambedkar Hospital, Raipur, where during the course of his treatment, he succumbed to injuries. Matter was reported to police station based on which crime bearing No. 56/2009 for offence punishable under Sections 279, 337, 338 and 304A of IPC was registered against non-applicant No. 1. Initially, claim application was filed by parents of deceased Gautam Mandal before competent Claims Tribunal for claiming Rs. 10,50,000/- as compensation from the respondents. During the pendency of the claim application, parents of the deceased died and thereafter the present appellants/claimants have been substituted in place of original claimants.

3. Non-applicant No. 1 & 2 submitted their reply to claim application and pleaded that the claim amount mentioned in the claim application is excessively high and false report has been lodged against them.
4. Non-applicant No. 3 submitted his reply to the claim application and denied all the adverse pleadings made against him. He submitted that he was the owner of the motor cycle bearing No. CG04.CY. 8925 and further held that on the date of accident, his motor cycle was taken by deceased Gautam Mandal without his permission.
5. Learned Claims Tribunal, on appreciation of pleadings and evidence placed on record by respective parties has held that accident took place from the offending vehicle in which deceased Gautam Mandal died. It was also held that, it could not be proved that on the date of accident, driver of the offending vehicle was possessing valid and effective driving license; and awarded a total

sum of Rs. 25,000/- as compensation against non-applicant No. 1&2/respondent No. 1&2 by holding that the present claimants are legal representatives of deceased but not dependent on the deceased.

6. Learned counsel appearing for the appellants/claimants submits that learned Claims Tribunal committed error in awarding compensation amount as only Rs. 25,000/- contrary to the provisions of Section 140 of the Motor Vehicles Act, 1988 (referred to as the 'Act'), where it has been provided that in a death case, a sum of Rs. 50,000/- to be awarded to the claimants. He further submits that even though it has been held by the learned Claims Tribunal that the claimants/appellants are not dependent upon the deceased but being the legal representatives of the deceased, they are entitled for a minimum amount of compensation as provided under the Act i.e. Rs. 50,000/- in a death case.
7. Per contra, learned counsel appearing for respondents No. 1 & 2 submits that on the basis of the material available on record, learned Claims Tribunal has rightly assessed the compensation as the appellant/claimants are not dependent on the deceased.
8. I have heard learned counsel for the parties and perused the material available on record.
9. Only argument raised by learned counsel for the appellant is that the claimants though not dependent upon the deceased but they are entitled for the amount of minimum compensation in a death case, as provided under the Act. Sub-section 2 of Section 140 of the Act provides for an amount of compensation of Rs. 50,000/- in a death case towards no fault liability. In the accident case, it is not the case of no fault liability as it is the case of loss of estate to the claimants/appellants. Appellants/claimants have definitely suffered towards the loss of estate on account of death of their brother who was just 20 years of age on the date of accident.
10. Perusal of the claim application would show that initially the claim application

was filed by the parents of the deceased only showing them to be dependent upon the deceased. On the date of filing of the claim application, other legal representatives of the deceased were also available but they were not impleaded as party in the claim application only because they might not have claimed themselves to be dependent on the deceased's income. Therefore, learned Claims Tribunal rightly come to the conclusion that the claimants who were substituted after death of original claimants (parents of the deceased) could not be treated as dependent upon the deceased. Appellant No. 1 is the elder brother of the deceased whose age has been shown as 25 years and Appellant No. 2 & 3 stating themselves to be the sisters of the deceased, but from the cause title it appears that they were married hence they were not treated as they were dependent on the deceased.

11. The hon'ble Supreme Court in the matter of **Smt. Manjuri Bera v. The Oriental Insurance Company Ltd.** reported in **(2007) 10 SCC 643** dealt with claim application filed by one of the sisters of the deceased who was not dependent on the deceased. In the fact of that case, it was held that the claimants being the legal representatives of the deceased would be liable for the amount towards the loss of estate and held as under:-

"16. In the impugned judgment the High Court has correctly drawn a distinction between "right to apply for compensation" and "entitlement to compensation". The High Court has rightly held that even a married daughter is a legal representative and she is certainly entitled to claim compensation. It was further held, on the facts of the present case, that the married daughter was not dependent on her father. She was living with her husband in her husband's house. Therefore, she was not entitled to claim statutory compensation. According to the High Court, the claimant was not dependent on her father's income. Hence, she was not entitled to claim compensation based on "No Fault Liability".

17. In my opinion, "No Fault Liability", envisaged in Section 140 of the said Act, is distinguishable from the rule of "Strict Liability". In the former, the compensation amount is fixed. It is Rs. 50,000/- in cases of death [Section 140(2)]. It is a statutory liability. It is an amount which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed amount/crystallized amount, the same has to be considered as part of the estate of the deceased. In

the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under "No fault Liability" in terms of Section 140 of the said Act. My opinion is confined only to the "No Fault Liability" under Section 140 of the said Act. That section is a Code by itself within the Motor Vehicles Act, 1988."

12. In view of the aforementioned facts and circumstances of the case particularly the fact that initially the claim application was not filed by the present appellant/claimants showing them to be dependent on the deceased but the claim application was filed only by the parents of the deceased and looking to the law laid down by Hon'ble Supreme Court in the matter of **Smt. Manjuri Bera** (supra) and in the considered opinion of this Court, learned Claims Tribunal committed error in awarding only Rs. 25,000/- towards compensation in a death case, contrary to the sub-section 2 of Section 140 of the Act. In the compensation as provided under sub-section 2 of Section 140 of the Act towards the death or the permanent disability is a statutory liability which is to be awarded to the claimants in any circumstances.
13. For the aforementioned reasons, the claimants will be entitled for a sum of Rs. 50,000/- as compensation instead of Rs. 25,000/- as awarded by the Claims Tribunal. The amount of compensation will carry an interest @ 9% from the date of filing of the application till its realization. In addition to that, Rs. 10,000/- towards funeral expenses, which the claimants will be entitled for. Rests of conditions imposed by Claims Tribunal shall remain intact.
14. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)

Judge