

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 662 of 2013

1. Ashok Bafana aged about 50 years, S/o Lt. Keshrimal Bafana
2. Smt. Shashi Bafana aged about 45 years, W/o Ashok Bafana

Both the appellants are R/o Ramadhin Marg Rajnandgaon, Tahsil, Civil & Revenue District Rajnandgaon (C.G.)

---- Appellants/Claimants

Versus

1. Jai Bhagwan Sharma R/o BT Road Bongoli, Kolkata (W.B)
(Owner of offending vehicle/Non-applicant No.1)
2. Oriental Insurance Co. Ltd. Through Branch Manager, Branch Office, Station Road, L.I.C. Office, Rajnandgaon, Civil and Revenue District Rajnandgaon (C.G.)
(Insurer of offending vehicle Truck No. WB.41 B-6739/Non-applicant No.2)
3. Branch Manager, Bharti A.X.A. General Insurance Co. Ltd., First Floor Chawala Complex Devendra Nagar Sairoad Raipur, Civil and Revenue District Raipur (C.G.)
(Insurer of vehicle Hundai Car I-10 No. CG-07/LT/1431 – Non-applicant No.3)

---- Non-applicants/Respondents

For Appellants	:	Shri Rakesh Thakur, Advocate
For Respondent No. 1	:	None
For Respondent No. 2	:	Shri Ratan Pusty, Advocate
For Respondent No. 3	:	Shri D.L. Dewangan, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

15.05.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of compensation awarded by the Second Additional Motor Accident Claims Tribunal, Rajnandgaon (C.G.) vide award dated 23.04.2013 passed in Claim Case No. 40 of 2012.
2. The Claimants/Appellants, unfortunate parents of deceased Ankit Bafana, claimed compensation of Rs.18,54,800/- by filing a claim petition under

Section 163A of the Motor Vehicles Act, 1988 for death of their son Ankit Bafana.

3. Facts of the case, in brief, are that on 26.11.2010 deceased Ankit Bafana alongwith his friends was coming from Nagpur by Hyundai I-10 Car bearing registration No. CG-07/LT/1431 which was being driven by Ankit Bafana and insured with non-applicant No.3. When at about 07-08:00 am he reached village Manegaon near Pal Dhabha by driving his Car, where one offending vehicle Truck bearing registration No. WB-41/B/6739, which was owned by non-applicant No. 1 and insured with non-applicant No.2, was parked on NH-6 road in no parking area without giving any indication or parking light, and the Car of Ankit Bafana was hit against the said Truck due to fog. As a result thereof, Ankit Bafana and his friends sustained grievous injuries and succumbed to the injuries of spot.

4. After considering the evidence led by the parties, the learned Tribunal, in the impugned award, has assessed total compensation of Rs.1,92,000/-. However, holding the deceased contributory negligent to the extent of 50%, the Tribunal has awarded a total compensation of Rs.96,000/- in favour of the Claimants/Appellants with interest @ 6% per annum from the date of application till realization, fastening liability upon the non-applicants No. 1 & 2 jointly and severally to pay compensation to the Claimants.

5. Contention of the learned counsel for the Appellants/Claimants is that the Tribunal has illegally deducted 50% on account of contributory negligence on the part of the deceased. He submits that as per provisions of Section 163A of the Motor Vehicles Act, 1988, Claimant not required to plead or establish the issue of negligence of deceased himself and 50% deduction towards personal and living expenses is also against the law and it should have been 1/3rd. He also submits that as per age of the parents of the deceased, the multiplier of 10 has wrongly been applied by the Tribunal, whereas, as per Second Schedule under Section 163A of the Act, looking to the age of deceased i.e. 22 years, the multiplier should have been 17. He further submits that no amount towards future prospects has been granted to the Claimants and the amount awarded under the conventional

heads also being on the lower side deserves to be enhanced suitably. In support of his contention, reliance has been place on the decision of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

6. On the other hand, learned counsel for Respondents No. 2 & 3/Insurance Companies support the impugned award and submit that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court. However, learned counsel for Respondent No.2/Insurer of offending vehicle Truck opposes the contention made by learned counsel for the Claimants regarding grant of future prospect and submits that there is no provision for future prospects in the Second Schedule under Section 163A of the Motor Vehicles Act.

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

8. Section 163A of the Motor Vehicles, Act, 1988 reads as follows:

“163A. Special provisions as to payment of compensation on structured formula basis. – (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or victim, as the case may be.

Explanation. – For the purposes of this sub-section, permanent disability shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.”

A reading of the above provision makes it clear that the claimants are entitled for compensation when it is proved that the vehicle in question is involved in the accident, i.e., the accident occurred out of use of the motor vehicle. Sub-section (2) of Section 163A of the Act makes it clear that in any claim for compensation under sub-section (1) of Section 163A of the Act, the claimants shall not be required to plead or establish that the death or permanent disability in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. Thus, it is clear that the claimants need not plead or prove the aspect of negligence. When the claimants need not plead or prove the aspect of negligence, the issue of negligence would not arise while considering claim petition under Section 163A of the Act. Therefore, in view of the above provisions, the impugned award, so far as it relates to contributory negligent on the part of the deceased, is set aside.

9. In the present case, on the date of accident, deceased Ankit Bafana was aged about 22 years and was earning Rs.3,300/- per month by doing the work of Contractor in M/s Ashok Brothers as pleaded by the Claimants, but no documentary evidence in support thereof has been adduced. Therefore, as per Second Schedule of Section 163A of the Motor Vehicles Act, the Tribunal has rightly considered the monthly income of the deceased as Rs.3,000/-.

10. So far as arguments relating to deduction towards personal and living expenses of the deceased; non-grant of future prospects; grant of low amount under the conventional heads and application of multiplier of 10 looking to the age of parents by the Tribunal are concerned, considering the age of deceased i.e. 22 years, the dependency, the nature of his job, the deceased was self employed & was a bachelor, the Second Schedule of Section 163A of the Motor Vehicles Act, 1988 and the decision of Hon'ble Supreme Court in *Pranay Sethi* (supra), the Claimants/Appellants are held entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.3,000/- per month (as considered by the Tribunal)	Rs.36,000/- per annum
2.	40% towards future prospects added to annual income of the deceased	(Rs.36,000/- + Rs.14,400/-) Rs.50,400/-
3.	1/3rd deduction towards personal and living expenses of the deceased (as per Second Schedule of Section 163A of the M.V. Act)	(Rs.50,400/- – Rs.16,800/-) Rs.33,600/-
4.	Multiplier of 17 applied (as per Second Schedule of Section 163A of the M.V. Act)	Rs.33,600/- x 17= Rs.5,71,200/-
5.	<u>Conventional Heads:</u> Loss of estate & funeral expenses	Rs.30,000/-
	Total Compensation	Rs.6,01,200/-

Since the Tribunal has already awarded Rs.96,000/-, after deducting the same from the above amount, the Claimants are held entitled for additional compensation of Rs.5,05,200/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

11. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

12. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge