

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 273 of 2013**

1. Nanji Bhai Patel, aged about 55 years, son of Vishram Bhai Patel,
2. Ramila Ben, aged about 54 years, wife of Nanji Bhai Patel

Both are resident of Devendra Nagar, Raipur, Police Station- Raipur, District- Raipur (C.G.).

---- Appellants/Claimants

Versus

1. Gyanchand Dhirvar @ Gyanu, aged about 20 years, son of Shri Kumar Dhirvar, resident of Daldal Sivni, Ekta Chowk, Bhathapara, Police Station- Pandri, District- Raipur (C.G.) Temporary Address- Quarter No. F-17 Rudri Colony, Dhamtari, P.S.-Rudri, District- Dhamtari (C.G.)

(Vehicle Driver- Motorcycle No. C.G.-04 C.Z.-4544)

2. Rajesh Kumar Baghmar son of Late Taturam Baghmar, aged about 35 years, Occupation- Fancy Store, resident of Daldar Sivni, Near Government School, Police Station- Pandri, District- Raipur (C.G.)

(Vehicle Owner- Motorcycle No. C.G.-04 C.Z.-4544)

3. Branch Manager, National Insurance Company Limited, Branch Office- third Floor Mobin Mahal, G.E. Road, Raipur Tahsil, Police Station & District- Raipur (C.G.)

(Vehicle Insurer- Motorcycle No. C.G.-04C.Z.-4544).

---- Respondents

For Appellants	:	Shri A. L. Singroul, Advocate.
For Respondent No.3	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

11.04. 2019

This appeal is by the claimants against the award dated 30.11.2012, passed by 4th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.40/2012 awarding total compensation of **Rs. 2,07,500/-** along with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

02. As per claim petition, when on 27.02.2011 at about 12.45 pm Rohit Kumar Patel (since deceased) aged about 21 years, who was earning Rs.6,000/- per month from the private job, was coming from saddu patrol pump, non applicant No. 1-Gyanchand Dhervar by driving the motorcycle bearing registration No. CG04-CZ/4544 in a rash and negligent manner dashed Rohit Kumar Patel, as a result of which he sustained multiple injuries and succumbed to these injuries. The offending vehicle is owned by non-applicant No. 2-Rajesh Kumar Baghmar & insured with the Non-applicant No. 3- National Insurance Company.

03. On claim petition being filed by the claimants/parents of the deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that income of the deceased has wrongly been considered by the Tribunal while computing the amount of compensation as Rs.3,000/- per month i.e. Rs. 36,000/- per year whereas it should have been considered in view of the minimum wages at the relevant time. He also submits that multiplier of 11 has wrongly been applied and considering the age of the deceased, it should have been 18. He further submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of **Smt. Sarla**

Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121, National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.

05. On the other hand, learned counsel for the respondent No. 3 /insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court. He also submits that learned Tribunal passed the award on merits but the finding on issue No. 2 3 & 4 was not discussed properly. As per award and finding given by the learned Tribunal, *prima facie* it seems to be incomplete award without any reasons, given finding on the aforesaid issues as per the certified copy produced alongwith appeal and original record of the instant case. Therefore, it needs to be remanded to the trial for fresh award.

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

07. In the present case, it is submitted by both the counsel for the parties that the award passed by the learned Tribunal is incomplete as page No. 3 of award is repeatedly signed by the concerned Judge and paragraphs Nos. 8 to 13 are missing and not found on the original record. Looking to the incomplete award passed by the learned Tribunal though the issues have been decided to the findings with regard to those issues are missing, the said award is liable to be set aside. Considering the facts and circumstances of the case, the nature and quality of evidence adduced by the respondent/Insurance Company, the provisions of the Motor Vehicles Act, the summary nature of trial, the finding so recorded by the Tribunal is not sustainable and this Court is of the opinion that matter needs to be decided afresh on merits by the Tribunal in accordance with law.

08. Accordingly, the appeal is allowed, the impugned award is set aside. The matter is remitted to the concerned Claims Tribunal for

deciding the claim petition afresh on its own merit in accordance with law in light of observations made hereinabove after affording due opportunity of hearing to the affected parties.

09. 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.

10. Record of the Claims Tribunal be sent back forthwith.

11. Parties are directed to appear before the concerned Claims Tribunal on **15th May, 2019**.

12. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge