

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (Civil) No. 324 of 2019**

1. Chintamani Mourya wife of late Gunnu Ram Mourya, aged about 28 years (Wad Mistra of appellant No.2)
2. Kumari Pramila Mourya, D/o late Gunnu Ram Mourya, aged about 9 years, (Minor, through natural guardian mother Chintamani Mourya, the appellant No.1)
3. Chitu Ram Mourya, son of late Nadi Ram Mourya, aged about 55 years
4. Chaiti Mourya, wife of Chitu Ram Mourya, aged about 55 years

All are R/o Sudupara Village Rotama, Post Madhota, P.S. Bastar, District Bastar (C.G.)

---- Appellants/Claimants

Versus

1. Kishore Kumar Uike son of Ram Singh Uike, aged about 25 years, Truck Driver, R/o Bacheli Ward No.1, Post Bacheli, District Dantewada (C.G.)
(Driver)
2. Manoj Kumar Jain son of Bhanwar Lal Jain, Vehicle Owner, R/o New Market Bacheli, Post Bacheli, District Dantewada (C.G.)
(Owner)
3. The Oriental Insurance Company Limited, Through: Branch Manager, Hotel Laxman Avenue, Murti Line, Jagdalpur, District Bastar (C.G.)
(Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri Praveen Dhurandhar, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

07.05.2019

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 Motor Accident Claims Tribunal, Bastar at Jagdalpur (C.G.) vide award dated 20.09.2018 passed in Claim Case No. 64 of 2018.
2. The Claimants/Appellants, unfortunate widow, daughter and parents of deceased- Gunnu Ram Mourya, aged about 30 years, claimed compensation of Rs.10,25,000/- by filing a claim petition under Section 163-A of the Motor Vehicles

Act, 1988 for death of Gunnu Ram Mourya in the motor accident.

3. Facts of the case, in brief, are that on 16.09.2017 deceased- Gunnu Ram Mourya had gone to Devra Market by his motorcycle. After purchasing the articles for daily use from Devra Market, he was coming to his house, when he reached National Highway No.30, non-applicant No.1- Kishore Kumar Uike, driver of the offending vehicle Truck bearing registration No. CG-20/G/0781, owned by non-applicant No.2 and insured with non-applicant No.3, driving the said vehicle in a rash and negligent manner, dashed the said motorcycle. As a result thereof, Gunnu Ram Mourya sustained grievous injuries and succumbed to those injuries. At the time of accident, the deceased was earning Rs.40,000/- per month by running a grocery shop.

4. The Tribunal keeping in view of the amendment in Second Schedule under Section 163-A of the Motor Vehicles Act as per Notification dated 22.05.2018 issued by the Ministry of Road Transport and Highways whereby a lump sum of Rs.5,00,000/- is granted as compensation for the death case, awarded compensation of Rs.5,00,000/- in the present case in favour of the Claimants with interest @ 9% per annum from the date of application till realization fastening the liability on non-applicant No.3.

5. Learned counsel for the Appellants/Claimants submits that the accident happened on 16.09.2017 and as per Notification mentioned by the Tribunal, it came into force with effect from 22.05.2018, therefore, the Tribunal has wrongly awarded compensation of Rs.5,00,000/- and that it cannot be implemented from retrospective effect. The reliance has been placed by learned counsel for the Appellants on the decision of Hon'ble Supreme Court in the matter of ***State of Punjab and Others Vs. Bhajan Kaur and Others, (2008) 12 SCC 112***. He also submits that the deceased was 30 years of age and was earning Rs. 40,000/- per annum by running a grocery shop. Therefore, in view of 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*** and ***National Insurance***

Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680, the amount of compensation awarded by the Tribunal deserves to be enhanced suitably by granting conventional heads and 40% towards future prospect as also by applying the multiplier of 17 to the annual income of the deceased.

6. On the other hand, learned counsel for 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.

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

8. In *Bhajan Kaur* case (supra), the Hon'ble Supreme Court has observed in paras 8 to 13 as under:

“8. Section 92-A of the 1939 Act provided for payment of a sum of Rs.15,000 by way of no fault liability. It was raised to Rs.25,000 by reason of Section 140 of the 1988 Act. However, with effect from 14-11-1994, by amending Act 54 of 1994, the quantum of the amount payable has been raised to Rs.50,000. Indisputably, under the 1939 Act only a sum of Rs.15,000 was payable by way of no fault liability. The question which arises for consideration in this appeal is as to whether it has a retrospective effect. In our opinion, it does not.

9. A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of the rule of law.

10. Section 92-A of the 1939 Act created a right and a liability on the owner of the vehicle. It is a statutory liability. Per se it is not a tortious (*sic* tortious) liability. Where a right is created by an enactment, in the absence of a clear provision in the statute, it is not to be applied retrospectively.

11. Ms Arora, however, has drawn our attention to a decision of the Kerala High Court in *United India Insurance Co. Ltd. v. Padmavathy*, 1990 ACJ 751 (Ker). The Kerala High Court referred to a decision of this Court in *M.K. Kunhimohammed v. P.A. Ahmedkutty*, (1987) 4 SCC 284 wherein the following observations were made: (SCC p. 295, para 14)

“14. Having regard to the inflationary pressures and the consequent loss of purchasing power of the rupee we feel that the amount of Rs.15,000 and the amount of Rs.7,500 in the above provisions appear to have become unrealistic. We, therefore, suggest that the limits of compensation in respect of death and in respect of permanent disablement, payable in the event of there being no proof of fault, should be raised adequately to meet the current situation.”

12. In *Padmavathy* the Kerala High Court held: (ACJ p. 756, paras 11-12)

“11. The said suggestion of the Supreme Court was given due respect by the law-making machinery when the Bill was finally introduced in Parliament. This fact can be discerned from the Statement of Objects and Reasons prefaced in the new Act. Therefore, in effect Parliament has only retained the same right which was conferred on the victims through Chapter VII-A of the repealed Act. The difference in the quantum of compensation is only intended to make the right realistic and on a par with the amount fixed earlier. Hence Section 6 of the General Clauses Act would not impede the enforcement of Section 140 of the new Act in relation to an accident which occurred prior to the coming into force of the new Act.

12. For yet another reason, we can support the said conclusion. Section 6 of the General Clauses Act permits switching over to the repealed Act only if a different intention does not appear in the new statute. Such a different intention can be discerned from the new Act. It is in Chapter X of the new Act that provisions regarding 'no fault liability' have been included. The Chapter starts with Section 140 and ends with Section 144. The last section reads as follows: 'The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.' The different intention manifested in the new Act is that the provisions in Chapter X should get predominance over all other laws. The provisions contained in that Chapter must be given effect to notwithstanding any contrary provision in any other law including Section 6 of the General Clauses Act. All other provisions, therefore, must yield to the provisions contained in Chapter X of the new Act. This is the legislative intention manifested through Section 144 of the new Act.”

In the decision of the Punjab and Haryana High Court in *Mosmi v. Ram Kumar*, 1992 ACJ 192 (P&H), reliance has been placed upon the judgment of the Kerala High Court. With the greatest of respect to the learned Judges of the Kerala and Punjab and Haryana High Courts, we could not persuade ourselves to agree with the said view.

13. No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing of the claim petition arises. As indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force on or about 1-7-1989”

9. It is not disputed by both the parties that deceased- Gunnu Ram Mourya died due to motor accident involving the vehicle Truck No. CG-20/G/0781 which was being driven by non-applicant No.1, owned by non-applicant No.2 and insured

with non-applicant No.3. In this case, no any breach of policy condition is proved by the Insurance Company and no any counter appeal or cross-objection has been filed by the Respondents/non-applicants.

10. It is also not in dispute that the accident occurred on 16.09.2017 and the Central Government has notified by amending the Motor Vehicles Act in Second Schedule under Section 163A of the Motor Vehicles Act (59 of 1988) on 22.05.2018 and Rs. 5,00,000/- has been fixed as compensation in case of death and that the said Notification shall be come into force on the date of publication in the official gazette. Therefore, Notification dated 22.05.2018 has prospective effect, not retrospective effect. It means that the said Notification has prospective effect. Therefore, compensation of Rs.5,00,000/- awarded by the Tribunal on the basis of Notification dated 22.05.2018 is not sustainable in law.

11. As per Ex.-A/1 – merg intimation; Ex.-A/6 – inquest; Ex.-A/7 – postmortem report and the pleading of the Claimants, deceased- Gunnu Ram Mourya was aged about 30 years on the date of accident as also the statement of wife of the deceased namely Chintamani Mourya (AW-1), she stated in para-7 that her husband (deceased) was 30 years of age, therefore, the age of the deceased was proved by documentary and oral evidence.

12. Therefore, considering the income of the deceased as Rs.40,000/- per annum pleaded by the Claimants, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in the matters of *Smt. Sarla Verma & Pranay Sethi* (supra) and also keeping in view of the Second Schedule under Section 163-A of the Motor Vehicles Act, 1988, the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased	Rs.40,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.40,000/- + Rs.16,000/-) Rs.56,000/-

3.	1/3rd deduction towards personal and living expenses of Deceased	(Rs.56,000/- – Rs.18,667/-) Rs.37,333/-
4.	Multiplier of 17 applied	Rs.37,333/- x 17 = Rs.6,34,661/-
5.	Conventional heads: Towards loss of estate, funeral expenses and loss of consortium	Rs.70,000/-
	Total Compensation	Rs.7,04,661/-

Since the Tribunal has already awarded Rs.5,00,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,04,661/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge