

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 894 of 2014

- The Oriental Insurance Co. Ltd. Rama Trade Centre, 1st Floor,
Bus Stand, Rajiv Plaza, Bilaspur C.G.,

---- Appellant/insurer

Versus

1. Jeetram S/o Sahetra Kashyap Aged About 45 Years
2. Ganeshiya Bai W/o Jeetram Kashyap Aged About 25 Years
3. Somnath S/o Jeetram Kashyap Aged About 12 Years Minor,
Thru- Father Jeetram Kashyap,

All R/o Village Buchuwakapa Jarhagaon, P.S. Jarhagaon, Tah.
Mungeli, Distt. Bilaspur C.G.

4. Sanjay Kashyap S/o Dhuniram Kashyap Aged About 26 Years
R/o Village Buchuwakapa Jarhagaon, P.S. Jarhagaon, Tah.
Mungeli, Distt. Bilaspur C.G., (driver)
5. Manoj Kumar Jaiswal S/o Ramdhan Aged About 38 Years R/o
Village Jarhagaon, P.S. Jarhagaon, Tah. Mungeli, Distt. Bilaspur
C.G. (owner)

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate.
For Respondent Nos. 1 to 3	:	Shri Sunil Sahu, Advocate.
For Respondent Nos. 4 & 5	:	None though served.

MAC No. 972 of 2014

1. Jeetram S/o Sahetara Kashyap Aged About 55 Years
2. Smt. Ganeshiya Bai W/o Jeetram Kashyap Aged About 40 Years
3. Somnath S/o Jeetram Kashyap Aged About 12 Years Minor,
Through Father Jeetram,

All are R/o Village Buchuwakapa Jarhagaon, P.S. Jarhagaon,
Tah. Mungeli, Revenue Distt. Mungeli, Civil Distt. Bilaspur (CG)

---- Appellants/claimants

Versus

1. Sanjay Kashyap S/o Dhaniram Kashyap Aged About 26 Years R/o Village Buchuwakapa Jarhagaon, P.S. Jarhagaon, Tah. Mungeli, Revenue Distt. Mungeli, Civil Distt. Bilaspur C.G. (Driver of Vehicle No. CG 10 C 3184)
2. Manoj Kumar Jayswal S/o Ramdhan Jayswal Aged About 38 Years R/o Village- Jarhagaon, P.S. Jarhagaon, Tah. Mungeli, Revenue Distt. Mungeli Civil Distt. Bilaspur C.G. (owner of vehicle No. CG 10 C 3184)
3. The Oriental Insurance Co. Ltd. Rama Trade Center, First Floor, Bus Stand Rajeev Plaza, Bilaspur, Civil and Revenue Distt. Bilaspur C.G.

---- Respondents

For Appellants	:	Shri Sunil Sahu, Advocate.
For Respondent Nos. 1 & 2	:	None though served.
For Respondent No.3	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

21/02/2019

As both these appeals arise out of the common award dated 30th June, 2014, passed by Additional Motor Accident Claims Tribunal, Mungeli, Distt. Bilaspur, in claim case No.240/2011, they are being disposed of by this common judgment. By the said award, the Tribunal in a death case has awarded compensation of 2.65 lacs in favour of the claimants with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicant No.3/insurance company jointly and severally along with non-applicants No. 1 & 2/driver & owner.

02. As per claim petition, on 10.6.2011 deceased Chandrakumar, aged about 25 years, earning Rs.5000/- per month by playing DJ and Rs.4,000/- by working as carpenter i.e. total Rs.9,000/-, was travelling in Pickup bearing No. CG 10 C 3184 along with goods i.e. DJ instruments, box, generator, DVD etc. as representative of owner of the

goods. The said vehicle was being driven by non-applicant No.1 Sanjay Kashyap in a rash and negligent manner, as a result of which it hit a tree at Mungeli-Bilaspur road near Pathariya turning. On account of this accident, Chandrakumar suffered grievous injuries and died during treatment on 12.6.2011 in the hospital. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

03. On claim petition being filed by the claimants, father, mother and minor brother of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. **MAC No.894/2014**: This appeal has been filed by the insurance company challenging the liability only on the ground that as the deceased was travelling in the offending vehicle i.e. Light Goods Vehicle, as a gratuitous passenger, the Tribunal was not justified in fastening liability on the insurance company of indemnifying the owner for the claim of the claimants.

05. Learned counsel for the respondents/claimants submits that arising out of the same accident, two other claim cases were filed i.e. Claim Case No.102/2013, Bharatlal Kashyap Vs. Sanjay Kumar Kashyap and others, and Claim Case No.103/2013, Anjali Bai and others Vs. Sanjay Kumar Kashyap and others and the said cases were decided by Additional Motor Accident Claims Tribunal (FTC), Bilaspur vide separate awards dated 31st October, 2013. In both the claim cases, liability has been fastened upon the insurance company herein and the awards have been satisfied by the insurance company, meaning thereby that it has admitted its liability and the said awards have attained finality for want of any challenge by the insurance company. Therefore, in this case, also the insurance company is liable to pay compensation to the claimants. Further, as per provisions of Section 147 of the Motor Vehicles Act after amendment in the year 1994, the deceased being representative of owner of the goods, is covered under the insurance policy.

06. **MAC No.972/2014:** This appeal has been filed by the claimants seeking enhancement of compensation. Learned counsel for the appellants/claimants submits as under:

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3000/- whereas it should have been Rs.4,500/- as per minimum wages of skilled labour at the relevant time.

(ii) that multiplier of 17 has wrongly been applied and considering the age of the deceased i.e. 25, it should have been 18.

(iii) that no amount towards future prospect has been granted to the claimants.

(iv) 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***, and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

07. On the other hand, learned counsel for the respondent/insurance company supports the impugned award insofar as it relates to quantum of compensation and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

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

09. So far as appeal MAC No.894/2014 filed by the insurance company is concerned, as per evidence of non-applicant No.2 Manoj Kumar Jaiswal (NAW-1), owner of the offending vehicle, on the date of accident the deceased was travelling in the offending vehicle along with goods as representative of owner of the goods. The said statement remained unchallenged in the cross-examination. He has further stated that he had given the offending vehicle for carrying the

DJ instruments and other articles and transportation charges were given by owner of the goods. Thus, considering the evidence of NAW-1 Manoj Kumar Jaiswal in light of provisions of Section 147 of the Motor Vehicles Act after amendment in the year 1994 as also the fact that in claim cases arising out of the same accident, the liability fastened upon the insurance company has been admitted by it and the insurance company has satisfied the awards passed in favour of the respective claimants, this Court finds no substance in the appeal of the insurance company and holds that the Tribunal was fully justified in fastening liability on the insurance company.

10. As regards the appeal i.e. MAC No.972/2014 filed by the claimants for enhancement, though the claimants have pleaded that the deceased was earning Rs.9,000/- per month by playing DJ and as a carpenter, but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4,500/- per month as per minimum wages at the relevant time of skilled labour. Further, considering the age of the deceased i.e. 25 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma*, and *Pranay Sethi* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.4,500/- month.	54,000/- per annum
02.	40% of (i) above to be added towards future prospects.	54,000 + 21,600 = 75,600/-
03.	50% deduction towards personal and living expenses of the deceased.	37,800/-
04.	Multiplier of 18 to be applied	6,80,400/-
05.	Towards loss of estate and funeral expenses	30,000/-

	Total compensation	7,10,400/-
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Since the Tribunal has already awarded Rs.2.65 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,45,400/- 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,

- MAC No.894/2014 filed by the insurance company being without any substance is hereby dismissed.
- MAC 972/2014 filed by the appellants/claimants is allowed in part with modification in the impugned award to the above extent. Non-applicant No.3/insurance company to deposit the entire amount of compensation with the concerned Tribunal within a period of one month from today.

Sd/

(Gautam Chourdiya)

Judge