

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 210 of 2014

1. Smt. Rajeshwari Devi Wd/o Late Rajendra Singh Thakur, aged about 44 years
2. Ku. Vinita Thakur D/o Late Rajendra Singh Thakur, aged about 24 years
3. Suraj Singh S/o Late Rajendra Singh Thakur, aged about 23 years
4. Neeraj Singh S/o Late Rajendra Singh Thakur, aged about 22 years

All R/o Tilda Road, Simga, Tahsil Simga, District- Baloda Bazar- Bhatapara (C.G.)

---- Appellants/Claimants

Versus

1. Pratap S/o Hariram Verma, R/o Village Boierjhiti, Police Station Newra, District- Raipur (C.G.)
(**Driver** of alleged vehicle Hero Honda bearing registration No. CG-04/A/8934)
2. Purushottam S/o Hemram Sahu, R/o Village Sirda, Police Station Baloda Bazar, District- Baloda Bazar- Bhatapara (C.G.)
(**Owner** of alleged vehicle Hero Honda bearing registration No. CG-04/A/8934)
3. Branch Manager, I.C.I.C.I. Lombard General Insurance Company Limited, 1st Floor, Vanijyak Bhawan, Devendra Nagar, Raipur (C.G.)
(**Insurer** of alleged vehicle Hero Honda bearing registration No. CG-4/A/8934)

---- Respondents

For Appellants	:	Shri Anil Gulati, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Amrito Das, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

21.01.2019

1. This is claimants' appeal filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the compensation awarded by the Seventh Additional Motor Accident Claims Tribunal, Raipur vide award dated 28.11.2013 passed in Claim Case No. 02 of 2013.
2. The Claimants, unfortunate wife, daughter and sons of deceased-Rajendra Singh Thakur claimed compensation of Rs.69,45,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for his death in the motor

accident on 04.12.2012, when his motorcycle bearing registration No. CG-04/CR/6086 was dashed by the offending vehicle Hero Honda CD Delux bearing registration No. CG-04/KA/8934, resulting in serious injuries to Rajendra Singh Thakur. Due to the said injuries, Rajendra Singh Thakur died on the spot. The Claimants further pleaded that deceased- Rajendra Singh Thakur used to earn Rs.1,000/- per day by doing as document writer in Simga Tehsil Office.

3. The driver and owner/Respondents 1 and 2 of the offending vehicle Hero Honda contested the claim and stated that the accident has not occurred from the offending vehicle and the accident occurred due to rash and negligent driving of deceased of his motorcycle as a result of which he fell down into the canal, and denied their liability to pay compensation to the Claimants.

4. The insurer/Respondent No.3 took the plea that the driver of offending vehicle Hero Honda was not holding a valid licence and the Hero Honda was being plied in breach of policy conditions.

5. The Claimants examined AW-1-Neeraj Singh Thakur and AW-2 – Santosh Sahu, who was pillion rider of the motorcycle of the deceased, in support of their claim, whereas the driver/Respondent No.1 examined himself as NAW-1 in his defence.

6. The Tribunal on the evidence led by the parties held that deceased- Rajendra Singh Thakur died on account of injuries sustained by him in the motor accident on 04.12.2012; the accident occurred due to rash and negligent driving of Respondent No.1/driver of the offending vehicle- Hero Honda and as the Hero Honda was insured on the date of the accident with Insurance Company/Respondent No.3, the Respondents 1 to 3 were jointly and severally liable to pay compensation to the Claimants/Appellants.

7. As the evidence led by the Claimants about the income of the deceased at Rs.30,000/- per month was not found reliable by the Tribunal, the income of the deceased was assessed at Rs.6,900/- per month including 15% increase in future

by the Tribunal on its own estimate. By deducting 1/3rd as the personal expenses of the deceased, the Claimants' dependency was assessed at Rs.4,600/- per month and Rs.55,200/- per annum. By multiplying the annual loss of dependency of Rs.55,200/- with the multiplier of 11, the total loss of dependency was worked out to Rs.,6,07,200/-. By awarding a further sum of Rs.25,000/- for funeral expenses; Rs.1,00,000/- for loss of consortium to wife/Claimant No.1; Rs.50,000/- each to Claimants 2 to 4 for love and affection and Rs.10,000/- for loss of estate, the Tribunal awarded a total sum of Rs.8,92,200/- as compensation to the Claimants for the death of deceased- Rajendra Singh Thakur in the motor accident on 04.12.2012. The Tribunal further awarded interest on the above amount of compensation of Rs.8,92,200/- @6% per annum from the date of filing of the claim petition till the date of actual payment.

8. Shri Anil Gulati, learned counsel for the Appellants/Claimants vehemently argued that the Tribunal has erred in not accepting the Claimants' evidence about the income of the deceased and in assessing his income at Rs.6,900/- per month only and in awarding low compensation of Rs.8,92,200/- only.

9. Shri Amrito Das, learned counsel for the Insurance Company/Respondent No.3 on the other hand supported the award and submitted that the compensation of Rs.8,92,200/- awarded by the Tribunal in the facts of the present case, is just and proper compensation.

10. The Claimants in their claim petition pleaded that deceased- Rajendra Singh Thakur used to earn Rs.30,000/- per month, but no reliable and clinching evidence was led to establish the said income of the deceased. In this state of evidence, the Tribunal was left with no other option, but to assess the income of the deceased on its own estimate. Considering the facts and circumstance of the case, particularly considering the evidence of AW-3 – N.K. Yadu who stated that the deceased used to earn Rs.1,000/- per day on its own knowledge and as per evidence of Neeraj Singh Thakur- AW-1 who did not say as to how much was being earned by his

father per day, I do not find any infirmity in the assessment of the income by the Tribunal at Rs.6,900/- per month and the Tribunal has been quite liberal in awarding higher amount towards funeral, for loss of consortium, love & affection etc. Thus, the Tribunal has awarded Rs.8,92,200/- as compensation, which, in my considered opinion, is just and proper compensation in the facts and circumstances of the case and needs no interference.

11. For the foregoing reasons, the appeal filed by the Appellants/Claimants for enhancement of compensation is, therefore, liable to be and is hereby dismissed.

12. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge