

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1314 of 2014

- Lal Sai Nand S/o Late Shri Magan Nand Aged About 69 Years R/o Village Gerrabhata, PS Basna And Tah. And Civil Distt. And Distt. Mahasamund C.G.

---- Appellant

Versus

1. Ravi Kumar Sethi S/o Shri Govind Chand Sethi Aged About 35 Years R/o Village Kochini Amba, PS Umarkot, Tah. And Civil and Revenue Distt. Navrangpur Orrisa Through Mr. Suchha Singh S/o Bachhan Singh, A.T.S. Transport, Kanshiram Nagar, PS Telibandha, Raipur C.G. Driver Of Truck No. C.G. - 04/JC/8225.
2. Suchha Singh S/o Late Shri Bachhan Singh Aged About 48 Years A.T.S. Transport, Kanshiram Nagar, PS Telibandha, Raipur C.G Owner Of Truck No. C.G. -04/JC/8225. , District : Raipur, Chhattisgarh
3. Future General Insurance Company Ltd. Through Its PS Office At, Maruti Business Park, Near Anupam Garden, 3rd Floor, G.E. Road, Raipur, C.G. Ins. Com. Of Truck No. C.G. -04/JC/8225.
4. Smt. Shailendri Nand W/o Late Shri Anish Kumar Nand Aged About 24 Years R/o Vishal Nagar, Behind Chhattisagarh Hotel, PS Telibandha, Raipur, Tah. And Civil Distt. And Distt. Raipur C.G.

---- Respondents

For Appellant	:	Shri JA Lohani, Advocate.
For Respondent Nos.1, 2 & 4	:	None though served.
For Respondent No.3	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

20/02/2019

This appeal is by non-applicant No.4 Lalsai Nand, father of the deceased, under Section 173 of the Motor Vehicles Act, 1988 against the award 25.9.2014 passed by III Additional Motor Accident Claims

Tribunal, Raipur in Claim Case No.13/2013 awarding total compensation of Rs.4,87,500/- 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, on 25.9.2012 deceased Anish Kumar Nand, 26 years, earning Rs.40,000/- per annum as a mason, was riding motorcycle bearing No. CG 04 CH 0647. However, non-applicant No.1 Ravi Kumar Sethi by driving truck bearing No. CG 04 JC 8225 in a rash and negligent manner, dashed the said motorcycle, as a result of which Anish Kumar Nand suffered grievous injuries and died on the spot itself. 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 claimant, wife of the deceased, under Section 163A of the Motor Vehicles Act wherein father of the deceased Lalsai Nand, appellant herein, was impleaded as non-applicant No.4, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellant submits that at the time of filing of claim petition, the appellant was 69 years of age and due to old age and certain physical ailments he could not appear before the Tribunal. Though he was impleaded as non-applicant No.4 in the claim petition but the Tribunal without considering the fact that as per claim petition itself, wife of the appellant has already died, the appellant is old aged, awarded the entire amount in favour of the claimant, wife of the deceased. Therefore, he submits that looking to the age of the appellant and the fact that there is no one to take care of him, he was totally dependent upon his son/deceased, 30% of the awarded amount may be granted in favour of the appellant.

05. Learned counsel for the respondent/insurance company has duly assisted the Court.

06. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

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

08. In this appeal, notice was served upon respondent No.4 Smt. Shailendri Nand, wife of the deceased, by way of substituted service through paper publication. However, none appears on behalf of respondent No.4. In the affidavit filed by the appellant in support of application for substituted service, his age is mentioned as 69 years. Therefore, considering the facts and circumstances of the case, in particular the age of the appellant, the fact that his wife has already died, no one is there to look after him as submitted by counsel for the appellant, this Court is of the opinion that it would be just and proper to grant him 15% out of the amount of Rs.4,87,500/- awarded by the Tribunal in favour of the claimant/wife of the deceased, which comes to Rs.73,125/-.

09. In the result, the appeal is allowed in part. The appellant is held entitled for a sum of Rs.73,125/- out of the amount awarded by the Tribunal in favour of the claimant/wife of the deceased. The award impugned stands modified to the above extent. However, rest of the conditions of the award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge