

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 97 of 2013

1. Sachin Sharma S/o Late Sagarmal Sharma Aged About 22 Years
R/o Purani Toli, Jashpur, P.S. Jashpur, Distt. Jashpur C.G.
2. Manish Sharma S/o Late Sagarmal Sharma Aged About 19
Years R/o Ambikapur Road, Patthalgaon, P.S. Patthalgaon, Distt.
Jashpur C.G.

---- Appellants/claimants

Versus

1. Regional Manager, Uttar Pradesh State Road Transport
Corporation, Azad Nagar, Depot Kanpur U.P., P.S. Kanpur, Uttar
Pradesh (owner of offending bus)
2. Vishnu Kumar Dwivedi S/o Shri Munnilal Dwivedi Aged About 33
Years R/o Bahlolpur, Manthana, P.S. Bithur, Distt. Kanpur U.P.
(driver of offending bus)
3. James Wat Xalxo S/o Sonaram R/o Village And P.S. Kansabel,
Tah. Bagicha, Distt. Jashpur C.G. (driver of car)
4. Bajaj Allianz General Insurance Co. Ltd. Shivmohan Bhawan,
Vidhan Sabha Marg, Pandri, Raipur, P.S. Pandri, Distt. Raipur
C.G. (Insurer of car)

---- Respondents

For Appellants	:	Shri Rishi Mahobia, Advocate.
For Respondent Nos. 1 & 2	:	Shri JK Saxena, Advocate.
For Respondent No.3	:	None though served.
For Respondent No.4	:	Shri SS Rajput, Advocate.

MAC No. 245 of 2013

1. Kshetriya Prabandhak Uttar Pradesh State Sadak Parivahan
Nigam, Azad Nagar, Depot, Kanpur U.P.
2. Vishnu Kumar Dwivedi S/o Munnilal Dwivedi Aged About 33
Years R/o Bahlolpur, Manthana, P.S. Bithur, Distt. Kanpur U.P.

---- Appellants

Versus

1. Sachin Sharma S/o Late Sagarmal Sharma Aged About 22 Years R/o Purani Toli, Jashpur, Distt. Jashpur C.G.
2. Manish Sharma S/o Late Sagarmal Sharma Aged About 19 Years R/o Ambikapur Road, Patthalgaon, Distt. Jashpur C.G.
3. James Wat Khalkho S/o Sonaram R/o Village - Kansabel, Tah. Bagicha, Distt. Jashpur C.G.
4. Bajaj Allianz General Insurance Co. Ltd. Shiv Mohan Bhawan, Vidhansabha Marg, Pandri, Raipur C.G.

---- Respondents

For Appellants	:	Shri JK Saxena, Advocate.
For Respondent Nos 1 & 2	:	Shri Rishi Mahobia, Advocate.
For Respondent No.3	:	None though served.
For Respondent No.4	:	Shri SS Rajput, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

06/05/2019

As both these appeals filed under Section 173 of the Motor Vehicles Act, 1988 arise out of award dated 22.11.2012 passed by Additional Motor Accident Claims Tribunal, Jashpur (CG) in Claim Case No.20/2012, they are being disposed of by this common judgment.

02. As per claim petition, on 14.11.2010 Sagarmal Sharma, Urmila Devi, Ku. Pooja Sharma along with their servant namely Sadhu were going by Car I-10 bearing No. CG 14B 3375 to Rajasthan, which was being driven by non-applicant No.3 James Wat Xalxo. This vehicle was followed by another vehicle Max Pickup bearing No.OR 16C/0894 loaded with goods and in which the claimants were sitting. However, on the way, non-applicant No.2 Vishnu Kumar Dwivedi by driving Roadways Bus bearing No. UP 32 BN 7297 in a rash and negligent manner dashed the said car as a result of which Sagarmal Sharma, Urmila Devi and Ku. Pooja Sharma suffered grievous injuries and succumbed to the same. At the time of accident, the offending bus was not insured whereas the car was insured with non-applicant No.4 Bajaj

Allianz General Insurance Co. Ltd.

According to the claimants, deceased Sagarmal Sharma, 44 years of age, was an Accountant and Businessman, earning Rs.1,62,000/- per annum. Deceased Urmila Devi, 42 years of age, was running a factory for manufacturing mixture and snacks, thereby earning Rs.2,01,000/- p.a. and likewise, deceased Pooja Sharma, aged about 20 years, a student of B.Com. (Final Year) was earning Rs.15,000/- per month by taking tuitions.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act for compensation against the death of Sagarmal Sharma, Urmila Devi and Ku. Pooja Sharma, the Tribunal considering the evidence led by the parties by the impugned award granted compensation of Rs.3.22 lacs, Rs.3.22 lacs and Rs.3.34 lacs respectively in favour of the claimants i.e. total Rs.9.68 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on non-applicants No. 1 & 2 jointly and severally.

04. **MAC No.245/2013**: Learned counsel for the appellants/owner & driver of offending vehicle submits that in fact the accident occurred due to rash and negligent driving of the car by non-applicant No.3 Jamex Wat Xalxo and therefore, it being insured at the relevant time with non-applicant No.4, both non-applicants No. 3 & 4 are liable to pay compensation to the claimants. Alternatively, he submits that as per statement of independent witness Krishna Kumar (NAW-2) there being contributory negligence on the part of non-applicant No.3, the Tribunal ought to have held that non-applicants No. 3 & 4 are also equally liable to pay compensation with non-applicants No. 1 & 2 to the claimants.

05. Learned counsel for the respondents/claimants opposes the contention of the appellants' counsel and supports the impugned awards insofar as it relates to fastening of liability on the appellants/non-applicants No. 1 & 2.

06. Learned counsel for respondent No.4/insurance company supporting the impugned award submits that the vehicle insured by it belongs to Sagarmal and since the owner Sagarmal himself has died in

this accident, the insurance company cannot be held liable to pay compensation to the claimants.

07. **MAC No.97/2013:** Learned counsel for the appellants/claimants submits that though the claimants had filed relevant Income Tax Returns of the deceased persons for the relevant period and earlier financial years and examined MR Chimankar (AW-2), Income Tax Inspector, to establish income of the deceased, but the Tribunal ignoring the said documentary and oral evidence, considered their income on notional basis. Further, no future prospect has been granted by the Tribunal and likewise, the amount awarded under the conventional heads 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***.

08. On the other hand, learned counsel for the respondents oppose the contention of the claimants' counsel and submit that the claimants are major sons of the deceased and the Tribunal has already awarded just and proper compensation to the claimants. Therefore, there is no requirement of further enhancing the compensation.

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

10. So far as liability part is concerned, from the evidence of non-applicant-2 Vishnu Kumar Dwivedi and non-applicant No.3 Jamex Wat Xalxo it is quite clear that non-applicant No.2 had wrongly entered the offending vehicle bus into one-way (Kanpur-Agra road) while going from Agra to Kanpur as a result of which it got hit against the car being driven by non-applicant No.2. There is no evidence adduced by non-applicants No. 1 & 2 to show contributory negligence on the part of driver of the car i.e. non-applicant No.3. Even there is no counter FIR against non-applicant No.3 whereas charge sheet was filed against

non-applicant No.2/driver of the offending bus. In these circumstances, the Tribunal was fully justified in fastening liability on non-applicants No. 1 & 2 of satisfying the award. Accordingly, the appeal preferred by the non-applicants No. 1 & 2 i.e. MAC No.245/2013 being without any substance is liable to be dismissed.

11. As regards the quantum of compensation, as per Ex.A/19 i.e. ITR for the Assessment Year 2009-10, the annual income of the deceased Sagarmal Sharma was Rs.1,62,305/- and as per Ex.A/26 i.e. ITR for the Assessment Year 2009-10, annual income of deceased Urmila Devi was Rs.1,80,620/-. The said documents have been duly proved by AW-2 MR Chimankar, Income Tax Inspector. Therefore, the Tribunal was not justified in considering their annual income on notional basis as Rs.36,000/-. Further, considering the age of deceased Sagarmal i.e. 47 years and age of deceased Urmila Devi 45 years and the nature of their job, there has to be addition of 25% to their annual income towards future prospect and similarly, the claimants are also entitled for Rs.15,000/- for funeral expenses and RS.15,000/- for loss of estate, in view of decision of the Hon'ble Supreme Court in *Pranay Sethi* (supra). Keeping in view the age of deceased Urmila Devi i.e. 45 years and the decision of the Hon'ble Supreme Court in *Sarla Verma* (supra), there should be application of multiplier of 14 in place of 13 as has been applied by the Tribunal. In view of above, the claimants are held entitled for compensation in the following manner:

In respect of death of Sagarmal Sharma:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased	1,62,305/- per annum
02.	25% of (i) above to be added towards future prospects.	1,62,305 + 40, 576 = 2,02,881/-
03.	1/3rd deduction towards personal and living expenses of the deceased	2,02,881 – 67,627 = 1,35,254/-
04.	Multiplier of 13 to be applied	17,58,302/-

05.	Towards loss of estate and funeral expenses.	30,000/-
	Total compensation	17,88,302/-

In respect of death of Urmila Sharma:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased	1,80,620/- per annum
02.	25% of (i) above to be added towards future prospects.	1,80,620 + 45, 155 = 2,25,775/-
03.	1/3rd deduction towards personal and living expenses of the deceased	2,25,775 – 75,258 = 1,50,517/-
04.	Multiplier of 14 to be applied	21,07,238/-/-
05.	Towards loss of estate and funeral expenses.	30,000/-
	Total compensation	21,37,238/-

12. So far as compensation of Rs. 3.34 lacs awarded by the Tribunal for the death of Ku. Pooja Sharma in favour of the claimants is concerned, the claimants being major brothers of deceased Ku. Pooja Sharma cannot be taken as dependents on her and therefore, in the facts and circumstances of the case, there being no counter appeal by the respondents, the amount so awarded by the Tribunal is kept intact. Thus, the claimants are held entitled for a total compensation of Rs.42,59,540/- (17,88,302 + 21,37,238 + 3,34,000).

Since the Tribunal has already awarded Rs.9.68 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.32,91,540/- with interest as awarded by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

13. In the result, the appeal MAC No.245/13 filed by non-applicants No. 1 & 2 being without any substance is dismissed and MAC No.97/13 filed by the claimants is allowed in part with modification in the impugned award to the above extent.

Sd/

(Gautam Chourdiya)

Judge

Khan