

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 117 of 2015**

1. Smt. Koushilya Tiwari Wd/o Late Banshilal Aged About 54 Years
2. Smt. Manjusa Tallu Wd/o Late D.G. Tallu Aged About 63 Years,
3. Deepak Tiwari S/o Banshilal Tiwari Aged About 20 Years

All are R/o Padmanabhpur, Distt. Durg C.G.

----Appellants

Versus

1. Ajit Tallu @ Tallo S/o Late D.G. Tallu Aged About 39 Years R/o L.I.G. 327, Padmanabhapur, Distt. Durg C.G.
2. Ajay Tallu S/o Late D.G. Tallu R/o House No. 12 B/street No. 3, Sector-2, Bhilai, Distt. Durg C.G.
3. The New India Insurance Company Ltd., Divisional Office, Above Dena Bank, Nandini Rod, Power House, Bhilai, Distt. Durg C.G.

---- Respondents

For Appellants	Shri Syed Majid Ali, Advocate.
For Respondent No.3	Shri Mahavir Bhatnagar, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

08/01/2019

1. This is claimants' appeal for enhancement of compensation awarded by the 1st Additional Motor Accidents Claims Tribunal, Durg, C.G. (for short 'the Tribunal') in claim case No. 28/2013 vide award dated 10.10.2014.
2. As against the compensation of Rs.40,00,000/- claimed by the appellants/claimants by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of deceased Bharti Tallu in the motor accident on 27.08.2012, the Tribunal awarded

a lump-sum amount of Rs.50,000/- as compensation along with interest @ 6% per annum from the date of claim application till its actual payment in favour of claimant No.2.

3. The Tribunal, on a close scrutiny of evidence led by the parties, held that the accident had occurred due to rash and negligent driving of Car bearing registration No. CG07-AM/2143 by its driver – Ajit Tallu, i.e., respondent No.1; the deceased Smt. Bharti Tallu sustained severe injuries on various parts of the body, during treatment she died and fastened liability upon respondent No.3 Insurance Company jointly and severely along with respondent Nos. 1 & 2.
4. Learned counsel for the appellants submits that the Tribunal has committed a gross illegality by holding that none of the claimants is dependent upon the deceased and as such entitled for compensation as claimed. From the pleadings of the case, it is evident that the claimant No.1 was Mother of the deceased, she was widow at the relevant time and was fully dependent upon the deceased. Likewise, claimant Nos. 2 & 3 are Mother-in-law and Brother of the deceased, claimant No.3 is unemployed and they were also dependent upon the deceased. In these circumstances, the Tribunal was not justified in holding them not dependent upon the deceased and granting only Rs.50,000/- under Section 140 of the Motor Vehicles Act towards no fault liability. Therefore, the matter needs to be remanded to the Tribunal with a direction to decide the claim case application after giving due opportunity of hearing and adducing evidence to the parties in accordance with law.
5. On the other hand, learned counsel appearing for the respondent No.3 Insurance Company supports the impugned award and submits that

the Tribunal was fully justified in holding that none of the claimants is dependent upon the deceased. Therefore, the award impugned needs no interference by this Court.

6. I have heard learned counsel appearing for the parties and perused the record of the Tribunal as well as award impugned.
7. Having heard learned counsel for the respective parties, having regard to the pleadings of the claimants in the claim petition, particularly in relation to dependency on the deceased, age of claimant Nos.1 & 2 i.e. 54 & 63 years respective at the time of filing claim petition, the fact that Claimant No.1 is the widow of Bansilal, Claimant No.3 was unemployed at the relevant time, the statement of AW-1 Smt. Koushaliya Tiwari as also the manner in which the Tribunal has decided the issue on dependency, this Court is of the opinion that the Tribunal was not justified in recording a finding that none of the claimants is dependent on the deceased and as such entitled for compensation against the death of the deceased.
8. In the matter of ***Mrs. Hafizun Begum v. Md. Ikram Heque & Ors.*** Reported in ***AIR 2007 SC 2680***, the Hon'ble Supreme Court while considering the issue of dependency for maintainability of claim petition observed in Para 12 as under:-

"12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique (AIR 1989 SC 1589) the definition contained in Section 2(11), CPC is inclusive in character and its scope is wide, it is confined to legal heirs only. Instead, it stipulates that a person who may or may not be legal heir, competent to inherit the property of the deceased, can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr. (AIR 1987 SC 1690) a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

9. For the reasons mentioned herein above, the appeal is allowed, the

award impugned is set aside and the matter is remitted back to the concerned Tribunal to decide the claim petition afresh on its own merits, after affording full opportunity of hearing to the parties, as expeditiously as possible, preferably within a period of 6 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Tribunal on 31st January, 2019.

10. Needless to mention the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any. The amount, if any, already paid to the claimants shall be adjusted in the final award to be passed afresh by the Tribunal.
11. Record of the Tribunal be sent back forthwith.
12. No order as to costs.

Sd/-
Gautam Chourdiya
Judge

Akhilesh