

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**MAC No. 615 of 2015**

1. Smt. Jaimuni Rajwade, widow of late Durga Prasad, aged about 25 years, Caste Rajwar,
  2. Minor Kamlesh son of late Durga Prasad, aged about 5 years, Minor through legal guardian mother Smt. Jaimuni Rajwade (Appellant No.1)
- Both R/o Village Korja, Nawapara, PS Lakhanpur, District Surguja (CG)

**----Appellants**

**VERSUS**

1. Ashok Gandhi son of Shri R. Gandhi, R/o Mahadev Nagar, Katani (MP) (Owner),
  2. Narendra Verma, son of Rajendra Kumar Sharma, R/o Amwari, Kaimur, District Katani (MP) (Driver)
  3. Shriram General Insurance Company Limited, E8, 08 Rico Sitapura, Jaipur,
  4. Smt. Sukhman wife of late Dhiran Sai, aged about 55 years,
  5. Minor Khelsai, son of late Dhiran Sai, aged about 16 years, Through The legal guardian mother Smt. Sukhman (Respondent 4)
- No.4 & 5 are R/o village Sapkara, Tahsil Surajpur, District Surajpur (CG)

**-----Respondents**

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| For Appellants        | : | Mrs.Meena Shastri, Advocate                                                   |
| For Respondent 1      | : | Mr. Akash Shrivastava, Advocate on behalf of Mr. Arvind Shrivastava, Advocate |
| For Other Respondents | : | None                                                                          |

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**Hon'ble Shri Justice Parth Prateem Sahu**

**Judgement on Board**

**21/06/2019**

1. The appellant/claimants have filed this appeal under Section 173 of the

Motor Vehicles Act, 1988 (hereinafter “the Act 1988”) challenging the impugned award dated 22.4.2015, passed by the 2<sup>nd</sup> Additional Motor Accidents Claims Tribunal, Ambikapur, Surguja (CG) in Claim case No. 21/2013 wherein the learned claims tribunal allowed the claim application in part and awarded a total sum of Rs.15,21,500/- as total compensation.

2. Brief facts relevant for disposal of this appeal are that on 24.9.2012, when Durga Prasad was travelling on a motorcycle and going to Charcha from village Satpata at that relevant time, one Truck bearing No. MP 53J 0198 driven by non-applicant 2, dashed the motorcycle of Durga Prasad. In the aforementioned accident, Durga Prasad suffered severe injuries over his person and succumbed to those injuries on the spot. The matter was reported to Police Station Charcha based on which Crime No.133/2012 for the offence under Section 304A of the IPC was registered against non-applicant 2.
3. The appellants herein have initially filed the claim application mentioning themselves to be legal representatives of the deceased- Durga Prasad. Subsequently, during the pendency of the claim application claimants 3 and 4 who are widow mother and minor brother of the deceased have been made party to the claim application as claimants/respondents 4 and 5. The claim application has been filed on behalf of the claimants 1 and 2 but by way of amendment names of claimants 3 and 4 have been added as claimants. Claimants 1 and 2 have amended the pleadings and mentioned that the deceased was residing separately in another village and he is not having any relationship with the claimants 3 and 4. They

have also pleaded that except the claimants 1 and 2 no other person were dependent on the deceased. In claim application they have pleaded that on the date of accident, the deceased was employed with South Eastern Coal Fields Limited and thereby earning Rs.25,000/- per month as salary and claimed Rs.40,00,000/- as compensation.

4. Non-applicants 1 and 2 submitted reply to the claim application and have denied the fact of accident. They have also denied the earning of the deceased Durga Prasad in claim application. It was also pleaded that on the date of accident non-applicant 2 was possessing valid and effective driving licence and the offending truck was insured with non-applicant 3/ insurance company on the date of accident.
5. On appreciation of the pleadings and evidence placed on record by the respective parties, the learned claims tribunal held that the accident took place on account of rash and negligent driving of the offending truck by non-applicant 2 and death of Durga Prasad took place in the motor accident with truck bearing No. MP53J 0198. It was also held that on the date of accident, non-applicant 2 was possessing valid and effective driving licence. After recording the aforementioned finding, the claims tribunal awarded compensation for Rs.15,21,500/- by assessing monthly income of the deceased as Rs.5,500/- p.m.
6. Learned counsel for the appellants submits that she is raising only one ground in her appeal with respect to the distribution of amount of compensation awarded by the learned claims tribunal. She argued that the learned claims tribunal erroneously distributed the amount of

compensation in equal ratio i.e. 1/4th to each of the claimant arrayed in claim application as claimants. She also argued that in claim application itself it has been specifically pleaded that non-applicants 3 and 4 were not residing with the deceased on the date of accident but they were residing separately in another village and therefore, they cannot be treated as dependents. The claims tribunal committed error in holding non-applicants 3 and 4 to be dependent on the deceased and awarding part of the amount of compensation. In alternate she also argued that even if the claims tribunal has held the claimants 3 and 4 to be dependent on the deceased then also the claims tribunal committed error in distributing the amount of compensation in equal ratio because the age of brother of the deceased has been mentioned as 16 years on the date of filing of the claim application and after few years he cannot claim himself to be dependent on the deceased.

7. Per contra, learned counsel appearing for respondent 3/insurance company supported the award and argued that the learned claims tribunal on the basis of material and evidence available on record has rightly passed the impugned award and distributed the amount of compensation looking to the relationship, age and their status.
8. I have heard learned counsel for the parties and perused the record.
9. Perusal of the record would show that initially the claim application has been filed only on behalf of claimants 1 and 2/appellants. The claimants 3 and 4 have been added by way of amendment and it has also been pleaded that claimants 3 and 4 were residing separately and having no

terms with the deceased. When once the claimants/appellants have held that they are not having any terms and relationship with the claimants 3 and 4, who are widow mother and minor brother of the deceased then the claimants instead of arraying them as claimants should have been arrayed as non-applicants therein so that they could have filed reply to the claim application and the pleadings which have been made against them. As they were impleaded in the array of cause title as claimants then they are deprived of from replying to the contents of the allegations which are against them and also to contest the case wherein the pleadings have been made against their interest.

10. In view of the above discussion and the facts emerging on record, the appellants/claimants are estopped from again raising the grounds that the claimants 3 and 4/respondents 4 and 5 were residing separately and not depend on the deceased and therefore, they are not entitled for any compensation. The argument raised by learned counsel for the appellants is not sustainable and is hereby repealed. So far the other ground raised by learned counsel for the appellants that the claims tribunal has committed error in distributing and apportionment of amount of compensation erroneously and dividing the amount of compensation equally between the widow of the deceased, child of the deceased and widow mother and minor brother of the deceased is concerned, true it is that the nature of dependency between the widow of the deceased and minor child of the deceased would be different than the widow mother of the deceased and minor brother of the deceased. The claims tribunal ought to have considered the dependency of the wife and children of the

deceased vis-a-vis dependency of the widow mother and minor brother of the deceased. All the four cannot stand at par. So far as the liability of the deceased for maintaining wife and children is much more than mother and brother is concerned. The amount of compensation is to be apportioned looking to the liability of the deceased towards his family members who are dependent on him looking to their relationship. The Hon'ble Supreme Court while distributing the amount of compensation between wife, children and mother has held that 50% of the amount of compensation to be given to the wife. The Hon'ble Supreme Court in the matter of Rajesh And Others Vs. Rajbir Singh And Others, reported in (2013) 9 SCC 54 has held as under :

“20. In the result, the appeal is allowed, the impugned judgment as also the award of the Tribunal are set aside. The claimant shall be entitled to a total compensation of Rs.22,81,320 with interest @ 7.5% p.a. from 26.11.2007 till realisation. The third respondent Insurance Company is directed to pay 50% of the enhanced compensation by getting prepared a demand draft in her name which shall be delivered at the address given by her in the claim petition within three months. Demand drafts for the balance amount in equal proportion, after deducting the amount, if any, already paid, shall be prepared in the name of the three minor children and the mother and the same shall also be delivered to the parties at the respective addresses given in the claim petition within three months. The amounts in the share of the minor children shall be deposited in the nationalised bank where the amounts as awarded by the Tribunal have already been deposited, till they attain majority. There is no order as to costs”.

11. In the light of ratio of distribution of the amount of compensation in the aforementioned judgment, if the facts and circumstances of the case is considered where claimants, who are widow and child of the deceased on

the one hand and widow mother and minor brother on the other hand, taking into consideration the observation made by the Hon'ble Supreme Court with respect to the discussion of the amount of compensation, in the opinion of this Court, the learned claims tribunal committed error in apportioning the amount of compensation equally between all the 4 claimants. In view of the above discussion, this Court proposes the apportionment of the amount of compensation awarded by the claims tribunal in following ratio:

(i) The appellant No.1 who is widow of the deceased will be entitled for 50% of the amount of compensation.

(ii) 40% of the amount of compensation will be distributed equally among appellants 2 (minor son of the deceased) and respondent 4 (widow mother of the deceased) balance 10% of the amount of compensation will be given to respondent 5 (minor brother of the deceased).

12. In view of the aforementioned discussion, the appeal is allowed in part and the impugned award is modified to the extent as indicated above. The amount of compensation as awarded by the claims tribunal i.e. Rs.15,21,500/- will be apportioned in the ratio as indicated above. Rest of the conditions imposed by the claims tribunal shall remain intact including award of interest.

Sd/

**(Parth Prateem Sahu)**

**Judge**

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