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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 345 of 2015

- Raman Jhariya S/o Lalaram Jhariya, aged about 30 years, registered owner of the offending vehicle, R/o Mathpara Ward No. 8 Kawardha, Tahsil Kawardha, Civil & Revenue District- Kabirdham (C.G.)

**---- Appellant/Non-applicant No.2/Registered owner
Versus**

1. Smt. Mithila Bai Wd/o Late Lekhram, aged about 30 years
2. Minor Kailash Kumar S/o Late Lekhram, aged about 10 years
3. Minor Ku. Kalyani D/o Late Lekhram, aged about 07 years
Resp. No. 2 & 3 are Minor through the natural guardian mother Smt. Mithila Bai Wd/o Late Lekhram, aged about 30 years
4. Smt. Pirit Bai Wd/o Late Chain Singh, aged about 50 years
All are by caste Vishwakarma, Occupation – not known, R/o Village- Harmo, Police Station- Rajanawagaon, Tahsil- Kawardha, District- Kabirdham (C.G.)
(Claimants)
5. Balram Gond S/o Kaduram Gond, aged about 35 years, Occupation- Agriculture & Driver of the Accidental Vehicle, R/o Village- Harmo, Police Station- Rajanawagaon, Tahsil – Kawardha, District- Kabirdham (C.G.)
(Driver/Non-applicant No.1)
6. The Oriental Insurance Company Ltd. Through- The Branch Office Kamthi Line, Rajnandgaon, Tahsil & District Rajnandgaon (C.G.)
(Insurer/Non-applicant No.3)
7. Shri Ganesh Prasad Awasthi S/o Shyam Prasad Awasthi, Occupation – Vakalat, R/o Kachahari Para, Kawardha, District Kabirdham (C.G.)
(Non-applicant No.4)
8. Krishna Baiga S/o Panchu Baiga, aged about 47 years, R/o Harmo, Police Station- Rajanawagaon (Bhoramdev), Tahsil- Badla, District- Kabirdham (C.G.)
(Non-applicant No.5)

---- Respondents

And

Miscellaneous Appeal (Civil) No. 1166 of 2015

1. Smt. Mithila Bai Wd/o Late Lekhram, aged about 30 years
2. Minor Kailash Kumar S/o Late Lekhram, aged about 10 years
3. Minor Ku. Kalyani D/o Late Lekhram, aged about 07 years
No. 2 & 3 are minors, through natural guardian mother Smt. Mithila Bai Wd/o Late Lekhram, aged about 30 years
All are R/o Village Harmo, Police Station Rajnawagaon, Tahsil Kawardha, District Kabirdham (C.G.)

---- Appellants/Claimants

Versus

1. Balram Gond S/o Koduram Gond, aged about 35 years, occupation agriculturist and driver of the offending vehicle, R/o Village Harmo, Police Station Rajnawagaon, Tahsil Kawardha, District Kabirdham (C.G.)
(Driver/Non-applicant No.1)
2. Raman Jhariya S/o Lalaram Jhariya, aged about 30 years, Occupation – owner of offending vehicle, R/o Mathpara, Ward No. 8, Kawardha, Tahsil Kawardha, District Kabirdham (C.G.)
(Non-applicant No.2/Registered owner)
3. Oriental Insurance Company Limited, Branch Office, Kamthi Line, Rajnandgaon, Tahsil and District- Rajnandgaon (C.G.)
(Insurer/Non-applicant No.3)
4. Shri Ganesh Prasad Awasthi S/o Shyam Prasad Awasthi, R/o near Kachaheri para, Kawardha, District Kabirdham (C.G.)
(Non-applicant No.4)
5. Krishna Baiga S/o Panchu Baiga, aged about 47 years, R/o Harmo, Police Station Rajnawagaon (Bhoramdeo) Tahsil Bodla, Distrit Kabirdham (C.G.)
(Non-applicant No.5)
6. Smt. Pirit Bai Wd/o late Chain Singh, aged about 50 years, R/o village Harmo, Police Station Rajnawagaon, Tahsil Kawardha, District Kabirdham (C.G.)
(Claimant No. 4 before Tribunal)

---- Respondents

For Claimants 1 to 3	:	Shri Qamrul Aziz, Advocate
For Driver Non-applicant No.1	:	None
For Registered Owner Non-applicant No.2	:	Shri Dharmesh Shrivastava, Advocate
For Insurance Company/ Non-applicant No.3	:	Shri N. K. Malviya & Shri Pankaj Agrawal, Advocates
For Non-applicant No. 4 & 5	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

06.02.2019

1. As both above appeals i.e. M.A.(C) No. 345 of 2015 and M.A.(C) No. 1166 of 2015 arise out of the accident occurred on 27.06.2011 involving the vehicle Suzuki Motorcycle bearing registration No. CG-09/A/0103, they are being disposed of by this common judgment.
2. M.A.(C) No. 345 of 2015 has been filed by the registered owner/non-applicant No.2 challenging the liability fastened upon non-applicants No. 1 & 2 and

also challenging for exoneration of Insurance Company/non-applicant No.3. M.A. (C) No. 1166 of 2015 has been filed the Claimants for seeking enhancement of compensation. Both appeals arise out of common award dated 08.07.2014 passed by the Motor Accident Claims Tribunal, Kabirdham (Kawardha), Chhattisgarh in Claim Case No. 96/2011 awarding compensation in favour of the Claimants of Rs.1,77,000/- with interest @ 7.5% per annum from the date of claim application till realization and has fastened the liability upon non-applicants No. 1 & 2/Driver & registered owner jointly and severally to pay compensation to the Claimants.

3. Brief facts of the case are that on 27.06.2011, deceased- Lekhram Vishwakarma with one Balram Gond/non-applicant No.1 was going to village- Palak by Suzuki Motorcycle No. CG-9/A/0103. The said motorcycle was being ridden by Balram Gond and Lekhram was the pillion rider of the said motorcycle. When they reached near Crusher-Plant of Sewa Singh, the said motorcycle met with an accident due to rash and negligent driving of Balram Gond. As a result thereof, pillion rider- Lekhram fell down on the road and received grievous injuries on head and blood was oozing out from the injuries. Lekhra was admitted for Primary treatment in Government Hospital, Lohara and he was referred to District Hospital Kawardha but due to the injuries, he was referred to Mekahara Raipur by the Government Hospital but on the way near Simga, Lekhram was died.

4. At the time of accident, non-applicant No. 2-Raman Jhariya was registered owner of Suzuki Motorcycle No. CG-9/A/0103 and the said vehicle insured with non-applicant No.3.

5. In M.A.(C) No. 345 of 2015 filed by the owner/non-applicant No.2, learned counsel appearing on behalf of the owner/non-applicant No.2 submits that at the time of accident, Suzuki motorcycle No. CG-9/A/0103 was sold to Krishna Baiga/non-applicant No.5, therefore, no liability can be fastened upon non-applicant No.2 by the Tribunal because non-applicant No.2 was the previous registered owner of the said motorcycle.

6. Learned counsel for the Insurance Company/non-applicant No.3 supports

the impugned award and submits the Tribunal considering all the relevant aspect of the matter has rightly fastened the liability upon non-applicants No. 1 & 2/rider & owner of the said motorcycle. He further submits the said motorcycle was never transferred on the name of Krishna Baiga/non-applicant No.5 and Krishna Baiga sold that vehicle to another person.

7. In ***Naveen Kumar Vs. Vijay Kumar and Others, (2018) 3 SCC 1***, “the Hon'ble Supreme Court has held that in view of the definition of the expression “owner” in Section 2(30) of the Motor Vehicles Act, 1988, it is the person in whose name the motor vehicle stands registered who, for the purposes of the said Act, would be treated as “owner”. The use of the expression “means” in Section 2(30) is a clear indication of the position that it is the registered owner whom Parliament has regarded as the owner of the vehicle. However, where a person is a minor, the guardian of that minor would be treated as owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. The latter part of the definition in Section 2(30) of the Motor Vehicle Act, 1988 is in the nature of an exception which applies where the motor vehicle is subject of a hire-purchase agreement or of an agreement of lease or hypothecation. Otherwise the definition stipulates that for the purpose of the said Act, The person in whose name the motor vehicle stands registered is treated as the owner. It was further held that in view of the above, in a situation such as the present one where the registered owner (i.e. R-1 herein) has purported to transfer the vehicle but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of his liability as owner under the Motor Vehicles Act.”

8. As per Ex.-NA-1 i.e. information given by Public Information Officer-cum-District Transport Authority, Kabirdham, on the date of accident, vehicle in question was owned by Raman Jhariya/non-applicant No.2. Further, as per Ex.-NA-16 agreement dated 27.12.2011, non-applicant No. 2 had sold the said vehicle No. CG-09/A/0103 to one Krishna Baiga/non-applicant No.5 on 27.12.2011, whereas

accident occurred on 27.06.2011. Thus, it was proved that on the date of accident, the said vehicle was in possession of its registered owner/non-applicant No.1.

9. Considering the above facts and circumstances of the case, particularly keeping in view of the decision of the Hon'ble Supreme Court in *Naveen Kumar* (supra), this Court finds no illegality or infirmity in the finding recorded by the Tribunal holding the owner/non-applicant No.2 and the driver/non-applicant No.1 liable for satisfying the award jointly and severally, therefore, the appeal i.e. M.A.(C) No. 345 of 2015 being without any substance is liable to be dismissed.

10. In M.A.(C) No. 1166 of 2015 filed by the Claimants, learned counsel appearing on behalf of the Claimants submits that on the date of accident i.e. on 27.06.2011, the deceased was aged about 35 years and was running a grocery business as also purchase & selling business and was earning Rs.15,000/- per month, but the Tribunal has wrongly considered the income of the deceased as Rs.15,000/- per annum as notional income. He further submits that 1/3rd deduction towards personal and living is also against the law and it should have been 1/4th and no amount towards future prospect has been granted to the Claimants. He also submits that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

11. Learned counsel for the owner/non-applicant No.2 opposes the contention made by the learned counsel for the Claimants and submits that looking to the aged of deceased i.e. 35 years, the Tribunal has wrongly applied the multiplier of 17 whereas it should have been 16.

12. As regard income of the deceased, the Claimants have pleaded that the deceased was earning Rs.15,000/- per month by running a grocery business as also purchase & selling business but no documentary evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased, the dependency, the nature of his job and the decisions of the

Hon'ble Supreme Court in **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**, the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.4,000/- per month	Rs.48,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.48,000/- + Rs.19,200/-) Rs.67,200/-
3.	1/4rd deduction towards personal and living expenses of Deceased	(Rs.67,200/- – Rs.16,800/-) Rs.50,400/-
4.	Multiplier of 16 applied (as applied by the Tribunal)	Rs.50,400/- x 16 = Rs.8,06,400/-
5.	Conventional heads:- Towards loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	Rs.8,76,400/-

13. Since the Tribunal has already awarded Rs.1,77,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.6,99,400/- with interest @ 7.5% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

14. In the result, the appeal i.e. M.A.(C) No. 1166 of 2015 filed by the Claimants is allowed in part with modification in the impugned award to the above extent and the appeal i.e. M.A.(C) No. 345 of 2015 filed by the Owner/non-applicant No.2 is dismissed.

15. No order as to cost.

Sd/-
(Gautam Chourdiya)
Judge