

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1537 of 2015**

1. Umed Ram S/o Bharat Barmate, Aged About 45 Years
 2. Smt. Indira Bai W/o Umed Ram, Aged About 41 Years
 3. Dau Lal S/o Umed Ram Barmate, Aged About 9 Years
 4. Parmeshwari D/o Umed Ram Barmate, Aged About 7 Years
- Appellants No. 3 to 4 minor through legal guardian Father Umed Ram Barmate, appellant No.1.

All are R/o Village Bairagpara, Pandariya, Hall Mukam – Village Rentuta, Tahsil Lormi, Distt. Bilaspur, Now Distt. Mungeli (CG)

---- Appellants/claimants

Versus

1. Surendra Kumar S/o Dukalu Ram Jangade, Aged About 30 Years R/o Village Bairagpara Pandariya, Tahsil Pandariya, District Kabirdham Chhattisgarh.....Driver Of The Offending Vehicle Matador No. C G 04 J B 4820
2. Gend Ram S/o Sitaram Patel, Aged About 30 Years R/o Village Ward No. 10, Pandariya, Tahsil Pandariya, District Kabirdham Chhattisgarh.....Owner Of The Offending Vehicle Matador No. C G 04 J B 4820
3. Tulsi S/o Laxman Prasad Gupta, Aged About 56 Years R/o Village Ward No. 10, Pandariya, Tahsil Pandariya, District Kabirdham Chhattisgarh.....Owner Of The Offending Vehicle Matador No. C G 04 J B 4820,
4. National Insurance Company Limited Branch No. 1, Naveen Bazar, Fool Chowk, G. E. Road Raipur Chhattisgarh.....Insurer

---- Respondents

For Appellants	:	Shri AL Singroul, Advocate.
For Respondent Nos.1 & 3	:	Shri Dinesh Tiwari, Advocate.
For Respondent No.2	:	None though served.
For Respondent No.4	:	Shri Qamrul Aziz, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

06/03/2019

This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award 7.10.2015 passed by Additional Motor Accident Claims Tribunal, Mungeli (CG) in Claim Case No. 218/2011 awarding total compensation of Rs.3.24 lacs with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 & 2/driver & owner jointly and

severally while exonerating non-applicant No.4/insurance company.

02. As per claim petition, on 23.3.2011 Karamchand @ Baban Satnani, aged 24 years, earning Rs.8,000/- per month by selling clothes, was travelling in Metador bearing No. CG 04 JB 4820 (offending vehicle) along with his clothes. However, due to rash and negligent driving of the said vehicle by non-applicant No.1, it was dashed against a tree, as a result of which Karamchand, who was sitting on the *Dala* of the vehicle, fell down, suffered grievous injuries and died during treatment in CIMS Hospital on 24.3.2011. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.4.

03. On claim petition being filed by the claimants, parents, brother and sister of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits as under:

(i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- whereas it should have been Rs. 5,000/- as per minimum wages at the relevant time.

(ii) that 1/3rd deduction towards personal and living is also against the law and it should have been $\frac{1}{2}$ as the deceased was bachelor.

(iii) that multiplier of 13 has wrongly been applied on the basis of age of parents of the deceased and considering the age of the deceased i.e. 25 years, it should have been 18.

(iv) that no amount towards future prospect has been granted to the claimants.

(v) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

(vi) that there is no breach of policy conditions on the part of non-applicant No.2/owner and therefore, the Tribunal has wrongly

exonerated the insurance company of its liability. Even if this Court finds that the exoneration of insurance company is proper, then considering the facts and circumstances of the case, order of pay and recover may be passed in this case.

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, National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680, Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796 and Shivawwa and another Vs. Branch Manager, National India Insurance Company Limited and another, (2018) 5 SCC 762.***

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly exonerated the insurance company and awarded compensation which needs no interference by this Court. He submits that since there was specific breach of policy conditions as the deceased was a gratuitous passenger in the offending vehicle, there cannot be any order for pay and recover in this case.

06. Learned counsel appearing for respondents No. 1 & 3 has duly assisted the Court.

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

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

09. So far as exoneration of the insurance company is concerned, from the evidence available on record it is seen that the deceased was travelling in the offending vehicle by sitting on its *Dala*, which was not permissible and that no premium was taken by the insurance company for covering the risk of the deceased. In these circumstances, the Tribunal was justified in exonerating the insurance company of its

liability.

10. As regards enhancement of compensation, though the claimants have pleaded that the deceased was earning Rs.8,000/- per month by selling clothes, 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 of skilled labour. Further, considering the age of the deceased i.e. 25 years as is evident from postmortem report (Ex.A/4), inquest report (Ex.A/3) and pleadings of the claimants, the dependency i.e. father and mother, the fact that the deceased was bachelor, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma* and *Pranay Sethi* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.4,000/- per month.	48,000/- per annum
02.	40% of (i) above to be added towards future prospects.	48,000 + 19,200 = 67,200/-
03.	50% deduction towards personal and living expenses of the deceased	33,600/-
04.	Multiplier of 18 to be applied	6,04,800/-
05.	Towards loss of estate (Rs.15,000/-) and for funeral expenses (Rs.15,000/-)	30,000/-
	Total compensation	6,34,800/-

Since the Tribunal has already awarded Rs.3.24 lacs, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.3,10,800/- with interest @ 6% per annum from the date of application till realization.

11. Considering the facts and circumstances of the case, the fact

that admittedly on the date of accident the offending vehicle was duly insured with non-applicant No.4, keeping in view the decisions of the Hon'ble Supreme Court in ***Manuara Khatun*** and ***Shivawwa*** (supra) this Court feels it proper to order for pay and recover in this case. Accordingly, it is directed that non-applicant No.4/insurance company shall pay the entire amount of compensation to the claimants within 45 days from today and it shall subsequently recover the same from non-applicant No.2/owner in accordance with law. If any amount has already been paid by non-applicant No.2/owner, the same shall be adjusted accordingly.

12. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge