NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 955 of 2012

- Vimal @ Sugaru Nishad S/o Baldau Nishad Aged About 32 Years R/o Village And Post Sardung, P.S. Old Bhilai, Tah. And Dist. Durg, Chhattisgarh

---- Appellant /NA1

Versus

1. Smt. Sunita Choudhari, W/o Late Shri Utthan Singh Chaudhari Aged About 38 Years (Applicant 1)
2. Utpal Chaudhari S/o Late Utthan Singh Chaudhari Aged About 18 Years (Applicant 2)
3. Ekta Chaudhari D/o Late Lakshman Singh Chaudhari Aged About 16 Years (Applicant 3)
4. Bhav Singh Chaudhari S/o Late Lakshman Singh Chaudhari Aged About 65 Years (Applicant 4)
5. Bodhani Chaudhari W/o Bhav Singh Chaudhari Aged About 60 Years (Applicant 5)
6. J.K. Chaudhari S/o Bhav Singh Chaudhari Aged About 42 Years (NA2)

   Respondent-3 is minor through mother/guardian Smt Sunita Chaudhari

   All R/o Village Aamti Post Nikum P.S. Anda, Tah. And District : Durg, Chhattisgarh
7. The Divisional Manager, Oriental Insurance Co. Ltd., Rajendra Park Chauwk Malviya Nagar, District : Durg, Chhattisgarh (NA3)

----Respondents

For Appellant	:	Shri Vipin Tiwari, Advocate
For Respondents-1 to 6	:	Shri CR Sahu, Advocate
For Respondent- 7/Ins Comp	:	Smt Chitra Shrivastava, Advocate

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Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
26.06.2020

1. This appeal has been preferred by appellant/ NA1, rider of one of the Motorcycles out of two, which met with an accident, challenging impugned award dated 29.02.2012 passed in Claim Case-202 of 2011 by the 3rd Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh (for

short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed the claim application in part.

2. Facts of the case in a nutshell are that, on 07.11.2010, Uthan Singh Chaudhary (since deceased) was going to village Anda from Aamti on his Motorcycle bearing No.CG07-NA 6738 (Motorcycle 6738) and on the way he met with an accident with another Motorcycle bearing No.CG07-CR 1378 (Motorcycle-1378) driven by appellant/NA1. In the aforementioned accident, Uthan Singh Chaudhary suffered internal injuries. He was taken to his house but at about 5 am on the next day ie on 08.11.2010, he died.

3. Claimants, who are widow, children and parents of deceased filed claim application under Section 163A of Motor Vehicles Act, 1988, pleading therein that deceased was earning Rs.3,300/- per month from his agricultural land and on account of supervision of agricultural land of his brother and thereby, claimed Rs.6,40,500/- as compensation.

4. Appellant/NA1 submitted reply to claim application denying the pleadings made in the claim application, pleaded that time of accident was 8.30 pm and not 8.30 am on 07.11.2010. Three persons were riding on Motorcycle-6738 and they have consumed liquor. It is the deceased himself, who dashed Motorcycle-1387 due to which appellant, rider of it suffered injuries, whereas, deceased has not sustained any injury over his person in the motor accident and his death was on account of 'cardiac arrest'.

5. NA2, who is owner of Motorcycle-6738 submitted reply to the claim application and admitted the pleadings made in claim application with

regard to manner of accident. He denied other pleadings adverse to him regarding dependency, loss of income as pleaded by claimants in their claim application. He has accepted payment of premium towards owner-cum-driver, the fact that deceased was driving the Motorcycle-6738. It was specifically pleaded that deceased will be 3rd party for the Motorcycle-1378. He also submits that the liability for payment of amount of compensation, if any, will be of Insurance Company.

6. NA3/Insurance Company while denying the contents of claim application, pleaded that deceased, who was driving the Motorcycle-6738 will nto be 3rd party. In Policy, premium of Rs.50/- was charged towards PA Coverage to owner-driver of vehicle. There was breach of conditions of Insurance Policy.

7. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties, held that accident between two Motorcycles is proved; death of deceased was on account of injuries suffered by him in the accident; and after assessing income of deceased as Rs.3,000/- per month, calculated the amount of compensation and awarded Rs.4,24,500/- as compensation. It is also held that appellant/NA1 is liable to pay Rs.2,12,250/-, Insurance Company is liable to pay Rs.1,00,000/- and rest of the amount ie Rs.1,12,250/- to be paid by NA2, owner.

8. Learned counsel for the appellant submits that death of deceased was not on account of motor accidental injures suffered by him, as there was no external injuries over his person. But he died due to heart attack

after about 9 hours of the accident, as pleaded by the claimants, in their claim application. He further submits that in fact, appellant himself suffered injuries and took treatment. He also points out that impugned award passed by learned Claims Tribunal is contrary to law. It is also argued that deceased was 3rd party for the Insurance Company but learned Claims Tribunal has erroneously considered and decided that the deceased was not a 3rd party. Appellant lodged FIR against deceased in Police Station but after his death, complaint was closed. Referring to post-mortem report, he argued that learned Claims Tribunal has not considered that death of deceased was not on account of any motor accidental injuries, but on account of some internal injuries, which cannot be attributed to the accident. Motor accident took place 9 hours prior to the alleged time of death. Lastly, he points out that learned Claims Tribunal has not considered the application for grant of compensation under provision of Section 163A of Motor Vehicles Act, 1988 but has calculated the amount of compensation as if the case is filed under Section 166 of the Act, by applying wrong multiplier and making wrong deduction towards personal and living expenses, apart from awarding higher amount on other conventional heads.

9. Per contra, Shri CR Sahu, learned counsel for respondents- 1 to 5/ claimants submits that learned Claims Tribunal after taking note of entire material and evidence on record, has correctly passed the award, which do not call for interference of this Court. Learned counsel further submits that though there may be no external injuries found on the body of deceased, but he suffered internal injuries in the accident. Internal injuries

on account of motor accident cannot be ruled out, even if no external injury is found on the body of any person.

10. Smt Chitra Shrivastava, learned counsel for the Insurance Company /respondent-7 also supports the award.

11. We have heard learned counsel for the parties and also perused the record. On perusal of pleadings of claimants as well as respondents, one thing is clear that accident took place at about 8.30 pm (night) and death of deceased was at 5 am, the next day, ie within 9 hours from the accident. Body of deceased was sent for post-mortem and in its report, which is available on record as Ex.P9 shows cause of death was due to internal injuries and shock. Post-mortem was conducted at about 10.30 am on 08.11.2011 in which time of death is mentioned as within 24 hours. Post-mortem report is an expert report and for the purpose of knowing cause of death of any person, it is the only proof. In post-mortem report, doctor found fracture of Sacrum bone (sacral vertebra) and Haematoma tent.

12. The claimants have examined two witnesses in support of their case. Claimant-1 was examined as AW1, who is widow of deceased. She in her evidence stated that her husband died in the morning and death is on account of internal injuries suffered by him in the motor accident. The submission made by learned counsel for the appellant that death of deceased was on account of heart attack is not acceptable in view of the report of expert ie Post-mortem report Ex.P9 which does not

mention anywhere that the cause of death was due to heart attack but it only mentioned the internal injuries (as mentioned above) and shock.

13. Claim cases are to be decided on the touchstone of preponderance and probability. Looking to the facts available on record that the deceased met with an accident while driving motorcycle with other motorcycle in the night at about 8.30 pm and died on the next day morning at 5 am, within 9 hours of that accident and internal injuries suffered by deceased as mentioned in preceding paragraph is sufficient to infer that death is due to motor accident.

14. Even the FIR has been lodged immediately on 08.11.2010 at about 8.30 am, mentioning the fact of accident, number of Motorcycle-CG07-LR1387 and the accused to be NA1, driver of aforementioned motorcycle.

15. From the aforementioned material available on record, particularly, the admission of fact of accident by NA1/appellant, FIR Ex.P3 lodged against appellant, alleging him to be negligent in the accident, post-mortem report Ex.P9, we do not find any error in the finding recorded by learned Claims Tribunal that death of deceased was on account of motor accidental injuries suffered by him with Motorcycle bearing No.CG07-LR1387.

16. Other submission made by learned counsel for appellant/ NA1 challenging quantum of award is concerned, claim is filed under Section 163A of Motor Vehicles Act, 1988 and therefore, the computation of amount of compensation is to be done strictly according to the schedule formulated under Section 163 A of the Act, 1988. In the 2nd Schedule it is

mentioned that deduction towards personal and living expenses to be 1/3rd and therefore, there will be a deduction of 1/3rd towards personal expenses. Award of amount on different heads ie towards funeral expenses Rs.2,000/- loss of consortium Rs.5,000/- and loss of estate Rs.2,500/- is also specified and those compensation cannot be more than what mentioned in Schedule.

17. In view of above, amount of compensation requires recalculation as under:

Income of deceased has been taken as Rs.3,000/- per month and Rs.36,000/- (3000 x 12) per annum. After deducting 1/3 of the amount, yearly loss of dependency will come to Rs.24,000/- {36000 — (36000 x 1/3)}. As on the date of accident age of deceased has been accepted as 40 years, appropriate multiplier would be 15. By multiplying yearly dependency with 15, total loss of dependency would come to Rs.3,60,000/-

Apart form above amount, claimants will be further entitled for Rs.2,000/- toward funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate.

Now, the respondent-claimants are entitled for Rs.3,69,500/- as total compensation instead of Rs.4,24,500/-.

Out of total amount of compensation, appellant will be liable to satisfy 50% ie Rs.1,84,750/-.

Out of balance amount of compensation, Insurance Company will be liable to pay Rs.1,00,000/- towards personal accident claim as held and which was confirmed by this Court in appeal preferred by the Insurance Company in MAC-498 of 2012 decided on 09.05.2018 wherein liability of Insurance Company to the extent of Rs.1,00,000/- has been confirmed. Balance amount of compensation ie Rs.84,750/- (184750 - 100000) to be paid by NA/respondent-6 herein.

This ratio of apportionment of compensation is in accordance with the award of the learned Claims Tribunal.

18. In view of above, appeal is allowed in part and impugned award is modified to the extent as indicated above. The amount of compensation will carry interest @ 7.5% as awarded by learned Claims Tribunal from the date of filing of claim application till its realisation.

Sd/-	Sd/-
(PR Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

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