NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 478 of 2014

- Parmanand Jaiswal S/o Suraj Jaiswal, aged about 40 years, R/o Village-Ratanpur, Tahsil-Khandganwa, District Koriya C.G.

------Appellant/Owner

VERSUS

1. Kunwariyabai W/o Ameersingh, aged about 40 years
2. Geeta Bai D/o Ameersingh, aged about 22 years
3. Rasiyabai D/o Ameersingh, aged about 20 years

   Residents of Pali Chowki, Korbi, district Korba C.G.

------Claimants

4. Narendra Prasad S/o Jeevanlal, aged about 28 years, R/o Village-Ratanpur, Khandganwa, District Koriya C.G. **--------Driver**
5. Bajaj Allianze General Insurance Company Limited through the Branch Manager, Office-Vidhan Sabha Road, Pandri, Raipur C.G.

----Respondents

WITH

MAC No. 181 of 2016

- The Bajaj Allianz General Insurance Company Limited through the Branch Manager, Office-Vidhan Sabha Road, Pandri, Police Station Pandri Civil and Revenue Dist. Raipur C.G. **---- Appellant**

Versus

1. Sampati Bai Wd/o Late Ramlal aged about 24 years
2. Kumari Parvati D/o Late Ramlal aged about 04 years (minor)
3. Dev Singh S/o Bahaddur Singh aged about 50 years
4. Injoriya W/o Dev Singh aged about 45 years, Respondent no. 2 is minor-through her mothe Res.no. 1 Sampati Bai, All R/o Tamdand, School para, Police Station Khandgawa, Tahsil Khandgawa, Dist. Koriya C.G.

-----Claimants

5. Narendra Prasad S/o Jivan Lal, aged about 28 years, R/o Ratanpur, Police Station Khandgawa, Dist. Koriya C.G. **-----Driver**
6. Parmanand Jaiswal S/o Suraj, aged about 28 years, R/o Ratanpur, Police Station Khandgawa, Dist. Koriya C.G. **-----Owner**

---- Respondents

WITH

MAC No. 479 of 2014

- Parmanand Jaiswal S/o Suraj Jaiswal, aged about 40 years, R/o Village-Ratanpur, Tahsil-Khandganwa, District Koriya C.G. **---- Appellant**

Versus

1. Ahibaran Singh S/o Kanhaiyalal, aged about 52 years
2. Maanmati W/o Ahibaran Singh, aged about 50 years

Residents of Jilda, P.S. Khandganwa, District Koriya, presently Residing at Pali Chowki, Korbi, District-Korba C.G. **-------Claimants**

3. Narendra Prasad S/o Jivan Lal, aged about 28 years, R/o Ratanpur, Police Station Khandgawa, Dist. Koriya C.G. **-----Driver**
4. The Bajaj Allianz General Insurance Company Limited through the Branch Manager, Office-Vidhan Sabha Road, Pandri, Police Station Pandri Civil and Revenue Dist. Raipur C.G.

---- Respondents

WITH

MAC No. 480 of 2014

- Parmanand Jaiswal S/o Suraj Jaiswal, aged about 40 years, R/o Village-Ratanpur, Tahsil-Khandganwa, District Koriya C.G. **---- Appellant**

Versus

1. Beersai S/o Ghansiram, aged about 50 years
2. Rambati W/o Beersai, aged about 48 years
3. Devraj S/o Beersai, aged about 10 years, through Res. No. 1

Residents of Jilda, P.S. Khandganwa, District Koriya, Presently Residing at Pali Chowki, Korbi, District-Korba C.G. **------Claimants**

4. Narendra Prasad S/o Jeevanlal, aged about 28 years, R/o Village- Ratanpur, Khandganwa, District Koriya C.G.
5. Bajaj Allianze General Insurance Company through the Branch Manager Office-Vidhan Sabha Road, Pandri, Raipur C.G.

------Respondents

WITH

MAC No. 1306 of 2014

- Parmanand Jaiswal S/o Suraj Jaiswal, aged about 40 years, R/o Village-Ratanpur, Tahsil-Khandganwa, District Koriya C.G. **---- Appellant**

VERSUS

1. Alakhram S/o Dakhalsai aged about 60 years, Resident of Village Jilda, P.S. Khandganwa, District Koriya, Presently Residing at Pali, Chowki-Korbi, District Korba C.G. **-----Claimant**
2. Narendra Prasad S/o Jeevanlal, aged about 28 years, R/o Village- Ratanpur, Khandganwa, District Koriya C.G.
3. Bajaj Allianze General Insurance Company through the Branch Manager Office-Vidhan Sabha Road, Pandri, Raipur C.G.

------Respondents

WITH

MAC No. 1491 of 2015

1. Sampati Bai, aged about 24 years, W/o late Ramlal, by Caste Gond
2. Ku. Parvati, aged about 4 years, D/o late Ramlal

Appellant 2 being minor through mother Sampati Bai

3. Devsingh, aged about 50 years, S/o Bahadur Singh By Caste Gond
4. Injoriya, aged about 45 years W/o Devsingh by Caste Gond

   All R/o Tamdand, Schoolpara, Thana Khandgawa, Dist. Koriya C.G.

-----Claimants

VERSUS

1. Narendra Prasad, aged about 28 years, S/o Jeevanlal By Caste Panika, R/o Ratanpur, thana Khadgawa, Dist. Koriya C.G. **------Driver**
2. Parmanand Jaiswal, aged about 38 years, S/o Suraj, R/o Ratanpur, Dist. Koriya C.G. **------Owner**
3. The Bajaj Alliance General Insurance Company Limited through Branch Manager, Branch Office, Shivmohan, Vidhansabha Road, Pandri, Dist. Raipur. C.G.

------Respondents

MAC No. 478/2014

For Appellant	:	Mr. Adil Minhaj, Advocate.
For Respondent 1 to 3	:	Mr. Aditya Khare, Advocate.
For Respondent No. 5	:	Mr. Sachin Singh Rajput, Advocate, Mr. Abhishek Sinha, Advocate

MAC No. 181/2016

For Appellant	:	Mr. Sachin Singh Rajput, Advocate Mr. Abhishek Sinha, Advocate

MAC No. 479/2014

For Appellant	:	Mr. Adil Minhaj, Advocate
For Respondent 1 and 2	:	Mr. Aditya Khare, Advocate.
For Respondent No. 5	:	Mr. Sachin Singh Rajput, Advocate Mr. Abhishek Sinha, Advocate

MAC No. 480/2014

For Appellant	:	Mr. Adil Minhaj, Advocate
For Respondent 1 to 3	:	Mr. Aditya Khare, Advocate.
For Respondent No. 5	:	Mr. Sachin Singh Rajput, Advocate Mr. Abhishek Sinha, Advocate

MAC No. 1306/2014

For Appellant	:	Mr. Adil Minhaj, Advocate
For Respondent 1	:	Mr. Aditya Khare, Advocate.
For Respondent No. 3	:	Mr. Sachin Singh Rajput, Advocate Mr. Abhishek Sinha, Advocate

MAC No. 1491/2015

For Appellant	:	Mr. Parag Kotecha, Advocate
For Respondent No.3	:	Mr. Sachin Singh Rajput, Advocate Mr. Abhishek Sinha, Advocate

---

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J.

14/09/2020

1. All these appeals are arising out of one and the same accident hence they are being disposed of by this common order.

2. MAC No. 478/2014, MAC No. 479/2014 and MAC No. 480/2014 have been filed by the owner of the offending vehicle challenging the impugned award dated 07-03-2014 whereby learned Claims Tribunal allowed the claim application filed by the claimants therein, while exonerating the Insurance Company from its liability, fastened the liability to satisfy the amount of awarded compensation on the appellant-owner. MAC 1306/2014 has been filed by the appellant-owner of the offending vehicle challenging the impugned award dated 12-11-2014 passed in claim case no. 09/2009 wherein learned Claims Tribunal allowed the claim application in part and while exonerating the Insurance Company from its liability, fastened the liability upon the appellant-owner to satisfy the amount of compensation holding that there was breach of policy conditions. MAC 1491/2015 is filed by the claimants seeking enhancement of the amount of compensation of the impugned award dated 09-10-2015 passed in claim case no. 101/14 whereby learned Claims Tribunal allowed the claim application in part and awarded sum of Rs. 4,19,000/- to the claimants and the liability has been fixed upon the non-applicants therein jointly and severally. MAC 181/2016 was filed by the Insurance Company challenging the award dated 09-10-2015 whereby learned Claims Tribunal fastened the liability upon the Insurance Company to satisfy the amount of compensation.

3. Sofar as, appeals MAC No. 478/2014, MAC No. 479/2014, MAC No. 480/2014 and 1306/2014 filed by the owner of the offending vehicle, the grounds taken in these appeals are identical that of fastening liability upon the appellant to be perverse to the material available on record.

4. Facts relevant for disposal of these appeals are that on 01-10-2008 at about 12:00 mid night when deceased persons were going as pedestrian near Sartiyamuda on a *pagdandi* in the forest area (very narrow path), at that relevant time, one tractor bearing registration no. CG 16E 0304 (henceforth "offending vehicle") driven by Respondent 4/ non-applicant 2 rashly and negligently came there, upon looking to the tractor driven rashly and negligently, they tried to save themselves from the vehicle but the offending vehicle dashed them and turned turtle in the ditch. In the said accident, deceased persons by name Rajkumar alias Manraj, Jaimangal, Ameer Singh, Parmeshwar and Ramlal came under the trolley of the offending tractor and died. The accident was reported to concerned police station based on which F.I.R. was registered against the driver of the offending vehicle.

5. Claimants have filed applications seeking compensation on account of death of Rajkumar alias Manraj, Jaimangal, Ameer Singh, Parmeshwar and Ramlal on the grounds mentioned therein. The specific pleading of the claimants in the claim application was that the deceased persons were walking on *pagdandi,* at that relevant time, offending tractor came there driven by Respondent 4/ non-applicant 2 rashly and negligently dashed them, the tractor also fell down into ditch and turned turtle.

6. Non-applicant 1 and 2 who are owner and driver of the offending vehicle submitted reply to the claim application while accepting the plea with regard to manner of accident pleaded in the applications, further pleaded that on the date of accident, non-applicant 2 was engaged as driver. Offending vehicle was insured with Non-applicant 3 Company. Amount claimed is highly exaggerated.

7. Non-applicant 3/ Respondent 5-Insurance Company submitted reply to the claim applications pleading therein that the claimants are not entitled for any amount of compensation from it. The accident took place on account of negligence on the part of non-applicant 2, there was no valid and effective

driving licence with non-applicant 2-driver, deceased and other persons were traveling as unauthorised passengers and their risk was not covered. The offending vehicle was being driven without valid permit and fitness. Intimation under Section 158 of the Act of 1988 was not given. Claim applications are liable to be dismissed.

8. Learned Claims Tribunal allowed the claim applications in part awarded amount of compensation in different claim applications separately. Learned Claims Tribunal in claim case no. 22/2009, 11/2009, 10/2009 and 09/2009 has held that the death was on account of motor accident, the deceased persons were traveling on the trolley which met with an accident. There was breach of policy conditions and fastened liability upon the appellant-owner to satisfy the amount of compensation.

9. Mr. Adil Minhaj, learned counsel for the appellant in MAC No. 478/2014, MAC No. 479/2014, MAC No. 480/2014 and 1306/2014 would argue that the finding recorded by the Claims Tribunal with regard to breach of conditions of insurance policy on account of deceased persons traveling on the tractor trolley is perverse. He submits that the Claims Tribunal has only considered the copy of F.I.R. placed on record by the claimants to prove the fact of accident but the Claims Tribunal ignoring all other evidence, orally and documentary, showing that the deceased persons were not the passengers over the tractor trolley but were pedestrian, fastened liability upon the appellant to satisfy the amount of compensation. He submits that the police on the basis of the F.I.R. has conducted investigation and submitted final report. Upon completion of the investigation submitted final report in which it was very specifically mentioned that the deceased persons were pedestrian and looking to the coming of tractor trolley driven in a very negligent manner, and caused accident which is mentioned in Ext. P-2 i.e. Final report. He argues that the Claims Tribunal erred in considering only the contents of the F.I.R. and not the entire documentary as well as oral evidence available on record and arrived at a wrong conclusion that the deceased persons were

traveling on the tractor trolley. He submits that from the pleadings in the claim application(s) also, it is apparent that the deceased persons were not the occupants of the offending vehicle as passengers but they were the third party and hit by the tractor (offending vehicle). He submits that in final report submitted by the police after completion of the investigation of the crime, it is mentioned that the deceased persons were walking on the *pagdandi* of village forest and the tractor dashed them and deceased persons fell into the ditch and the tractor also fell over them into ditch. He referred the statement of Sudhir Kumar Dhurve and B. L. Diwaker, recorded under Section 161 Cr.PC. by the police authorities placed on record as Ext. 5C and 6C and submitted that Sudhir Kumar and B.L. Diwaker are the eye-witness to the accident, they have examined before the Claims Tribunal as witness. Sudhir Kumar was examined as NAW-1-3 and B.L. Diwaker as NAW-1-2 and they have very categorically stated that when they were going from Ratanpur to Parri on motor cycle driven by B.L. Diwaker and reached near Sartiyamuda village forest area, they saw a tractor coming and further five persons walking on the pagdandi jumped into the ditch and tractor also fell down into ditch and turned turtle. Learned counsel further submitted that the award passed in claim application no. 59/2008 was challenged before this Court in MAC No. 610/2010 by the appellant-owner and MAC No. 750/2010 by the Insurance Company and Hon'ble High Court taking into consideration the submission of the learned counsel for the appellant therein remitted back the case to the Claims Tribunal for deciding afresh after taking into consideration the charge-sheet and also after considering the statement of witnesses recorded by the Magistrate. Copy of the order passed by this Court on 20-01-2011 was placed on record before the Tribunal in other claim cases but the Tribunal has not taken into consideration the order passed and direction given by this Court in the remand order. He further submits that in pursuance of the remand order of this Court with regard to 59/2008, learned Claims Tribunal upon considering the case afresh in accordance with the direction issued by this Court has concluded that the deceased persons were not the occupants/ passengers of the offending vehicle but they were pedestrian.

10. After remand, the Investigating Officer of crime was examined before the Tribunal. In his statement he stated that in final report, he has mentioned that all the five persons were pedestrian and on account of the falling of the tractor into ditch they came under the tractor. The Investigating Officer was examined as NAW-3. He contended that the Claims Tribunal ignoring all the evidence i.e. final report ext. P-2, evidence of claimants' witnesses AW1, AW2, AW3, AW4, NAW1 and investigating officer, has arrived at an erroneous finding. The finding recorded by the Claims Tribunal is only on the basis of presumption and surmises.

11. Per contra, Mr. Sachin Singh Rajput, learned counsel for the Insurance Company submits that the story narrated in the claim application(s) by the claimants is highly improbable that all the five persons jump into one ditch, the <u>witnesses are not trustworthy witnesses</u>. He argued that the Police reached on the spot at about 6-7:00 in the morning, F.I.R. was lodged by the driver of offending vehicle, therefore, the contents F.I.R. cannot be said to be an unreliable piece of evidence. Referring to the evidence of Sohan Singh Dhruv NAW-3-1, investigating officer, learned counsel argued that this witness in paragraph 6 has admitted that the passengers of the tractor died on account of coming under the tractor trolley as the tractor turned turtle and the Claims Tribunal has rightly held that the deceased persons were traveling on the tractor trolley. Truth is emerging from the contents of F.I.R. Facts narrated to the police and so called eye-witnesses examined by the Claims Tribunal by Non-applicant 1 is an afterthought and not trustworthy.

12. Learned counsel for the Insurance Company in MAC No. 478/2014, MAC No. 479/2014, MAC No. 480/2014 and 1306/2014 submits that the FIR lodged by the driver itself stands on a higher pedestal, all other facts are afterthought.

Merely non-examination of the driver of the offending vehicle before the Claims Tribunal will not be fatal for Insurance Company.

13. In MAC No. 1491 of 2015, Mr. Parag Kotecha, learned counsel for the appellant submits that the deceased persons were pedestrian. Learned Claims Tribunal in claim application of the appellant, has considered and held that the deceased persons were not the occupants/ passengers of the tractor trolley. He submits that he has filed an appeal for enhancement of the award on the ground that the Claims Tribunal has awarded meagre amount of compensation by assessing income of the deceased as Rs. 3,000/- per month and has not calculated the amount of compensation in accordance with the dictum of Hon'ble Supreme Court in case of ***Sarla Verma & others v. Delhi Transport Corp. & anr.*** reported in **(2009) 6 SCC 121,** *National Insurance Company Ltd. vs. Pranay Sethi* reported in **(2017) 16 SCC 680 and** ***Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others*** reported in **(2018) 18 SCC 130**. He prayed that the amount of compensation to be enhanced suitably.

14. We have heard learned counsel for the respective parties and also perused the record.

15. So far as the first submission made by Mr. Adil Minhaj, learned counsel for the appellant-owner, we have gone through the record of claim case, pleadings made in the claim application and evidence available on record. In claim applications, claimants have pleaded that the deceased persons (pedestrian) were dashed by the Tractor and thereafter tractor turned turtle in which deceased persons came under the Tractor trolley. Copy of FIR is filed as Ext. P-1, it was recorded by the Narendra Prasad in which, it is mentioned that he took, Ramlal, Jaimangal, Rajkumar and Prameshwar on his vehicle and on the way pagdandi of jungle, it met with an accident and fell into the ditch. On the basis of FIR, the police conducted investigation of the crime. After completion of the investigation, final report (Ext.P-2) was submitted before the

competent court in which it is clearly mentioned that the deceased persons were walking on the pagdandi of village jungle and on account of rash and negligent driving of Non-applicant 1 caused accident to the deceased persons, they fell down into the ditch and the tractor trolley also fell down into the same ditch and turned turtle.

16. Claimants in support of their case have examined Veersai as AW-1, Dharmendra Singh AW-2, Parmanand NAW-1-1, B.L.Diwaker, NAW-1-2, Sudheer Kumar NAW-1-3. In their statement recorded before the Claims Tribunal they have stated that deceased persons were walking over the pagdandi and the tractor dashed them on account of which they fell down in a ditch and tractor also fell down in the ditch and turned turtle. Sohan Singh Dhruv, Investigation Officer, NAW-3-1 was examined by the Insurance Company after remand of the case. In paragraph 6 at one place, he admits that the passengers traveling on tractor died on account of turning turtle of the tractor trolley, apart from this one line, there is no other evidence or material before the Claims Tribunal to show that the deceased persons were traveling on tractor.

17. It is a trite law that the evidence of a witness has to be considered as a whole. In his evidence, apart from the aforementioned one line, he has stated that during the course of investigation recorded statement of witnesses and thereafter submitted the final report. He also specifically submitted that he has mentioned the fact in final report which was based on the material collected by him during the course of investigation.

18. So far as, the one line on which Mr. Sachin Singh Rajput, learned counsel has placed reliance that there is an admission on the part of the witness Sohan Singh that the deceased persons was traveling on tractor trolley is not appealing us because this witness is not an eye witness, in fact he is only the investigating officer and his final report placed on record upon conclusion of the investigation can be considered to ascertain the manner in which

accident took place and deceased persons died. Even otherwise, the F.I.R. is the intimation given to the police but correctness of the contents of the F.I.R. can be considered on the basis of the investigation report i.e. the final report. The final report is submitted on the basis of the material collected by the investigating officer/ agency after recording statement of the witnesses under Section 161 of the CrPC and collecting other materials during the course of investigation and, therefore, final report is to be placed on higher pedestal than that of F.I.R.

19. We have gone through the evidence of Veersai AW-1 who is not an eye witness but based on the information gathered by him, stated that his son Rajkumar was dashed by the tractor trolley. Dharmendra Singh was examined as AW2, he was also not an eye witness to the accident. Sudheer Prasad Dhruv examined as NAW-1-3 who in his evidence has stated that he along with one B.L. Diwaker was travelling on a motor cycle on that road. In the head light of the tractor, they saw that the deceased persons were walking and while trying to save themselves from the tractor coming rashly and negligently, fell down in the ditch and the tractor trolley was also fell down in the ditch and they came under the tractor and trolley. B.L. Diwaker also examined as NAW-1-2 and he also stated the same fact.

20. In view of the aforementioned evidence available on record, particularly, the copy of final report and the oral evidence of witnesses stating that the deceased persons were pedestrian, we are of the view that the finding recorded by the Claims Tribunal that the deceased persons were travelling on the tractor trolley are perverse to the other material available on record. Claims Tribunal erred in considering the contents of the FIR and not considering the final report submitted by investigating officer after completion of the investigation. Claim cases are to be decided on preponderance of probabilities. It is not to be decided on the evidence of beyond reasonable doubt as required in criminal cases. The accident took place in forest area on

a '*pagdandi'* (narrow path), one side, admittedly, there was a ditch, possibility of felling down of the deceased persons and felling of the tractor in the ditch is plausible fact. The Hon'ble Supreme Court in the case of ***Bimla Devi v. Himachal RTC*** reported in **(2009) 13 SCC 530** has considered the issue with regard to nature of proof required in the claim cases to prove the factum of accident that the Tribunal is not bound by the pleadings of the parties under *stricto sensu* and held as under:

> "*11*. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post-mortem report vis-a-vis the averments made in a claim petition.
>
> * * *
>
> 15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

In case of ***Parmeshwari v. Amir Chand and others*** reported in **(2011) 11 SCC 635** hon'ble Supreme Court has again considered the nature of evidence required to prove the fact of accident and while relying upon its earlier judgment in the case of **Bimla Devi (supra)** has held as under.

> 13. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly

> perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in Bimla Devi and others vs. Himachal Road Transport Corporation and others [(2009) 13 SCC 530] are very pertinent: (SCC p. 534, para 15)
>
> > "*15.* In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

The Hon'ble Supreme Court in its recent judgment decided on 14.02.2019 in **Civil Appeal No. 1665/2019** in ***Sunita & others v. Rajasthan State Road Transport Corporation & another*** has again considered the nature of proof required in claim cases and held thus:

> “25. The Tribunal’s reliance upon FIR 247/2011 (Exh. 1) and charge-sheet (Exh. 2) also cannot be faulted as these documents indicate the complicity of respondent No.2. The FIR and charge-sheet, coupled with the other evidence on record, inarguably establishes the occurrence of the fatal accident and also point towards the negligence of the respondent No.2 in causing the said accident. Even if the final outcome of the criminal proceedings against respondent No.2 is unknown, the same would make no difference atleast for the purposes of deciding the claim petition under the Act. This Court in *Mangla Ram* (supra), noted that the nature of proof required to establish culpability under criminal law is far higher than the standard required under the law of torts to create liability.”

21. Taking support of the aforementioned law laid down by the Supreme Court and in the facts and circumstances of the case, we are of the considered view that the claimants have brought on record the manner in which the accident took place by examining the eye-witness and also submitting the charge-sheet/ final report by the investigating agency wherein it has come on record

that the deceased persons were pedestrians and not the occupants of the vehicle, Claims Tribunal erred in relying only the contents of F.I.R. and arrived at an erroneous finding that the deceased persons were traveling on tractor trolley which is not sustainable and it is hereby set aside.

22. We have set aside the finding recorded by the Claims Tribunal in 22/2009, 11/2009, 10/2009 and 09/2009 that the deceased persons were traveling on the tractor trolley, we hold that the deceased persons were pedestrian and being so, they are the third party. The vehicle was insured for the period from 06-04-2008 to 05-04-2009. The risk of the deceased persons being third party was covered. Policy issued is Farmers Package Policy. The finding recorded by the Claims Tribunal that there was breach of conditions of insurance policy is also set aside and now the liability to satisfy the amount of compensation will be upon the Insurance Company. The appellants will be entitled to recover the amount so deposited by him upon depositing the entire amount of compensation by the Respondent-Insurance Company before the Claims tribunal.

23. In view of the aforementioned finding recorded by this Court, the appeal filed by the Insurance Company challenging the impugned award dated 09-10-2015 passed in Claim case no. 101/14 is dismissed.

24. So far as, MAC No. 1491/2015 filed by the claimants for enhancement of the amount of impugned award, the learned Claims Tribunal has awarded a total sum of Rs. 4,19,000/- as compensation assessing the income of the deceased as Rs. 3,000/- per month, deducting 1/3rd towards personal and living expenses, applying the multiplier of 16 and awarded Rs. 35,000/- on other conventional heads.

25. Mr. Parag Kotecha, learned counsel for the appellant submits that the date of accident is of 26-04-2010, the claimants have very specifically pleaded that the deceased was working as Mason which comes within the category of

skilled labour and, therefore, the income as pleaded in the claim application ought to have been considered. He also submits that no compensation towards future prospects has been awarded, the deduction ought to have been 1/4th instead of 1/3rd as the number of claimants are 4 and the amount awarded on other conventional heads are on lower side in view of the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** and **Nanu Ram (supra).**

26. Mr. Abhishek Sinha, learned counsel for Insurance Company submits that the claimants have failed to prove the income of the deceased and the Claims Tribunal is justified in assessing the income of the deceased on notional basis. The amount of compensation awarded to the claimants/ appellants is just and proper which does not call for any interference. Considering the nature of occupation as pleaded and stated by the claimants before the Claims Tribunal and the date of accident, income of the deceased assessed by the Claims Tribunal appears to this Court on lower side. Even if the claimants failed to prove the income of the deceased by placing cogent and reliable piece of evidence, then also the income of the deceased is to be assessed on notional basis after taking into consideration the date of accident, wage structure, cost of living and occupation in which the deceased was engaged.

27. Looking to the date of accident and occupation of deceased persons as brought on record, we find it appropriate to assess the income of the deceased as Rs. 4,000/- per month. As per law laid down by the Supreme Court in the case of **Pranay Sethi (supra),** there will be an addition of 40% towards future prospects as on the date of accident, deceased has been shown to be less than 40 years of age. The number of claimants has been shown as four, one of the claimants, father of the deceased, aged 55 years may not be dependent upon the deceased.

28. In view of the above, the Claims Tribunal has rightly applied the deduction of 1/3rd towards personal and living expenses and the multiplier is also correctly applied taking into consideration the age of the deceased as 35 years as held by the Supreme Court in the case of **Sarla Verma (supra)** The learned Claims Tribunal awarded total sum of Rs. 35,000/- on other conventional heads which appears to be on lower side. Amount of compensation on the head of other conventional is to be awarded in the light of law laid down by the Supreme Court in the case of **Pranay Sethi (Supra), Nanu Ram (supra).**

29. For the foregoing reasons, the amount of compensation to be awarded to the claimants/ appellants in MA(C) No. 1491/2015 requires re-computation which is as under.

30. The income of the deceased is taken as Rs. 4,000/- per month i.e. Rs. 48,000/- p.a., by adding 40% towards future prospects, the annual income of the deceased will come to Rs. 67,200/-, there will be deduction of 1/3rd towards personal and living expenses which makes loss of yearly dependency as Rs.44,800/- [Rs.67,200-1/3rd of Rs. 67,200]. By applying multiplier of 16, total loss of dependency will come to Rs. 7,16,800/- [Rs.44,800x16]. Apart from the above, the claimants will be entitled for Rs. 40,000/- towards loss of spousal consortium, Rs. 40,000/- towards parental consortium, Rs. 40,000/- towards filial consortium, Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses. Now, the appellants-claimants will be entitled for total sum of **Rs. 8,66,800/-** [Rs.7,16,800 + Rs.40,000 + Rs.40,000 + Rs.40,000 + Rs.15,000 + Rs.15,000] as compensation. The aforementioned amount of compensation shall carry interest @ 7% p.a. from the date of filing of claim application till its realization. Other conditions imposed by the Claims Tribunal will remain intact. The liability to satisfy the amount of compensation will be upon the Insurance Company.

31. Resultantly, appeals filed by the owner of the offending vehicle MAC No. 478/2014, MAC No. 479/2014, MAC No. 480/2014, 1306/2014 and MAC No. 1491/2015 are allowed in part. MAC No. 181/2016 filed by the Insurance Company is dismissed. Now the liability to satisfy the amount of compensation in all the claim cases as well as MAC 1491/2015 will be on Insurance Company. The impugned awards are hereby modified accordingly.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

Pawan