

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 413 of 2014**

{Arising out of order dated 28.10.2011 passed by First Additional Motor Accident Claims Tribunal Raigarh, Chhattisgarh in Claim Case No.91 of 2011}

Kanhaiya @ Kalu Yadav S/o Manoj Yadav Aged About 16 years (now 18 years) R/o Naharpara, Lailunga, Tahsil and P.S. Lailunga, District Raigarh, Chhattisgarh

---- Appellant**Versus**

1. Rajendra Singh Saini S/o Chanan Singh Saini Occupation Vehicle owner R/o G.E. Road, Tatibandh, Raipur, P.S. Tatibandh, District Raipur, Chhattisgarh
2. Arun Kumar Mahto S/o Krishna Singh Mahto Aged About 26 Years Occupation Driver R/o G.E. Road, Tatibandh, Raipur, P.S. Tatibandh, District Raipur, Chhattisgarh
3. Branch Manager The New India Insurance Company, Address- Nagpur, Do-2, Udyam Building, West High Court Road, Near Shankar Nagar, Square Dharampath Nagpur Maharashtra, 440010, Local Branch Office, Sattigudi Chowk, Raigarh Chhattisgarh
4. Pawan Yadav S/o Manoj Yadav Aged About 21 Years R/o Naharpara, Lailunga, Tahsil and P.S. Lailunga, District Raigarh, Chhattisgarh

---- Respondents

For Appellant	:	Shri Manoj Jaiswal, Advocate
For Respondent No.1, 2 & 4	:	None
For Respondent No.3	:	Shri Qamarul Aziz, Advocate

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

Judgment on Board**Per P. R. Ramachandra Menon, Chief Justice****10.08.2020**

1. The casual and cursory award passed by the Tribunal granting a paltry compensation of just Rs.7,000/- in respect of the demise of the sibling of the Appellant in a road traffic accident, denying proper compensation simply holding that the Appellant/Claimant was not the dependent of the deceased, is the subject matter of challenge in this appeal.

2. The factual matrix reveals that, the deceased brother of the Appellant, by name, Kishan alias Aughad Yadav, was travelling on the ill-fated day, as a pillion rider on the motorcycle bearing No.CG-12/ZE/7230 ridden by his friend, by name, Saddam alias Chhotu and when they reached the place of occurrence, they were knocked down by the offending Truck bearing No.CG-04/JA/0285, owned by the 1st Respondent, driven by the 2nd Respondent and insured by the 3rd Respondent. Because of the fatal injuries inflicted, both the riders of the motorcycle succumbed to the injuries and lost their lives. This led to separate claim petitions filed by the legal representatives before the Tribunal where they were numbered as Claim Case No.91 of 2011 (involved in the present appeal) and Claim Case No.92 of 2011. Claim Case No.91 of 2011 was filed by the Appellant joining hands with the 4th Respondent, who is another brother of the Appellant and the deceased.
3. On conclusion of the trial, the Tribunal, based on the materials on record, held that the accident was solely because of the negligence on the part of the 2nd Respondent/driver of the offending Truck and proceeded to work out the compensation. In the connected case filed by the parents of the deceased in Claim Case No.92 of 2011, a total compensation of Rs.2,99,000/- was awarded, directing the same to be satisfied with interest at the rate of 6% per annum and the liability was fixed upon the insurer of the offending Truck, based on the valid and effective insurance policy in existence.
4. Coming to the instant case, the Tribunal held that the Claimants (the Appellant and the 4th Respondent) were not dependents of the deceased pillion rider and hence, only a meager sum of Rs.7,000/- has been awarded towards funeral expenses and love and affection, denying

appropriate compensation under all relevant heads, which led to the present appeal.

5. The primary question to be considered is whether 'dependency' has to be established so as to get compensation to the Claimants. Section 166 of the Motor Vehicles Act, 1988 stipulates that the claim petition can be filed by the 'legal representatives' (need not be the legal heirs) and on filing such claim petition and on establishing the facts and figures, an award is to be passed by the Tribunal, which necessarily has to be a 'just award' as envisaged under Section 168 of the Motor Vehicles Act, 1988.

6. A question had come up for consideration before the Apex Court as to whether married sons of the deceased having independent family could maintain a petition, claiming compensation in respect of the deceased. It was held by the Apex Court in **National Insurance Company Limited v. Birender and Others** reported in **AIR 2020 SC 434** held that the claim petition is maintainable even by married sons, who need not be the dependents of the deceased and that the compensation payable for the wrong committed would go to the estate of the deceased; which in turn could be claimed by the Claimants. In the instant case, admittedly, the parents of the deceased were not alive. The deceased was only a bachelor aged about 18 years, who died intestate, leaving the siblings, who are the Appellant and the 4th Respondent. It was accordingly that, they had jointly filed the claim petition before the Tribunal as Claim Case No.91 of 2011. As it stands so, proper compensation had to be awarded by the Tribunal under all the legally reckonable heads, in terms of the law declared by the Apex Court and denial of the same, but for granting only a sum of Rs.7,000/- holding that the Claimants were not dependents of the deceased, is not correct or sustainable.

7. Coming to the quantum of compensation payable, the eligibility to get compensation under various heads stands settled by virtue of the law declared by the Apex Court in **Sarla Verma Vs. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121**. It stands affirmed by the Constitution Bench of the Apex Court in **National Insurance Company Limited vs Pranay Sethi & Others** reported in **(2017) 16 SCC 680**.
8. The question involved is the correct quantification of amount payable to the Claimants in the instant case, in terms of the above verdicts.
9. Even if the claim of the Appellant that the deceased was engaged in the business of 'fish vending' is not accepted for adequate proof/evidence, it can be easily presumed that an able-bodied youth of 18 years as in the instant case, would have earned a notional income of Rs.4,000/- per month; as the date of accident occurred in June 2010, as a manual worker. Going by the rulings rendered by the Apex Court as cited above, in the case of persons of less than 40 years of age with no fixed income, 40% of the income has to be added for fixing the multiplicand. Since the deceased was a bachelor, 50% has to be deducted towards personal expenses and the appropriate multiplier is 18.
10. On computing the compensation payable towards loss of life as above, it comes to **Rs.6,04,800/-** ($4,000 \times 40\% = 1,600$; $4,000 + 1,600 = 5600 \times 12 \times 50/100 \times 18$). The Claimants are also entitled to get a sum of **Rs.15,000/-** towards funeral expenses and **Rs.15,000/-** towards loss of estate. Since the deceased was only a bachelor and the parents of the deceased are no more and further since the Claimants are only siblings, we do not find any authority to grant compensation towards the loss of consortium.

11. In the above circumstances, the total compensation payable comes to **Rs.6,34,800/-** (6,04,800 + 15,000 + 15,000). After giving credit to the sum of Rs.7,000/- awarded by the Tribunal, the balance payable comes to **Rs.6,27,800** (rupees six lacs twenty-seven thousand eight hundred only) (6,34,800 – 7,000), which requires to be satisfied with interest at the rate of 7% per annum from the date of filing of claim petition, till satisfaction.
12. Obviously, the 1st Applicant before the Tribunal has not joined hands to file present appeal along with the Appellant/brother and hence has been shown as the 4th Respondent in this appeal. However, the additional compensation granted by this Court has to be shared equally between the Appellant and the 4th Respondent (both the original Claimants) and they are brothers of the deceased.
13. Since the offending Truck was covered by valid insurance policy, we hold that the liability as above, shall be satisfied by the 3rd Respondent/insurer. The amount due shall be worked out and it shall be deposited by the 3rd Respondent/insurer before the Tribunal with intimation to the Appellant and also to the 4th Respondent, as expeditiously as possible, at any rate within 'six weeks' from the date of receipt of a copy of this judgment. The appeal stands allowed to the said extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge