

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 426 of 2014

1. Smt. Chandravati, W/o Late Mangal Maitri, Aged About 50 Years, Occupation-dependent
2. Ku. Lalita Bai, D/o Late Mangal Maitri, Aged About 18 Years, Occupation-Dependent
3. Pushpa, D/o Late Mangal Maitri, Aged About 17 Years, Occupation-Student
4. Durga Prasad, S/o Late Mangal Maitri, Aged About 16 Years, Occupation-Student
5. Chudamani, S/o Late Mangal Maitri, Aged About 14 Years, Occupation-Student

Appellants 3 to 5 are minors through legal guardian mother Smt Chandravati

All are R/o Village-Jevra, P.S. And Tah. Sarangarh, District : Raigarh, Chhattisgarh

---- Appellants/Claimants

Versus

1. Gayaram Kurre, S/o Kiriram Kurre, Occupation- Vehicle Owner, Vehicle No.CG 04 HB 8153, R/o Rajendra Nagar, Katora Talab, Raipur C.G., At Present R/o Village-Raikona, Police Station and Tahsil – Sarsinwa, Distt. Baloda Bazar , Chhattisgarh
2. Rajkumar, S/o Babulal Ratre, Occupation-Vehicle Driver, R/o Jogesara, P.S. And Tah. Sarsinwa, District : Balodabazar, Chhattisgarh
3. Bajaj Allianz Insu.Co.Ltd. Thru- The Branch Manager, Branch Office- Shivmohan Bhawan, District : Raipur, Chhattisgarh

---- Respondents/NAs

MAC No. 604 of 2014

- Branch Manager, Bajaj Allianz Gene. Insu. Co. Ltd. Branch Office- Raipur, Shiv Mohan Bhawan, Vidhan Sabha Road, Raipur C.G. Pin- 492001, Chhattisgarh (Insurance Company of White Scorpio Jeep No.CG-04-HB 8153)

---- Appellant

Versus

1. Smt. Chandrawati, W/o Late Mangal Maitry Aged About 50 Years
2. Ku. Lalita Bai D/o Late Mangal Maitry Aged About 18 Years
3. Minor Pushpa D/o Late Mangal Maitry Aged About 17 Years, Occupation-Student
4. Minor Durga Prasad S/o Late Mangal Maitry Aged About 16 Years, Occupation-Student
5. Minor Chunamani D/o Late Mangal Maitry Aged About 14 Years, Occupation-Student (Claimants)
6. Gayaram Kurre, S/o Kiriram Kurre, R/o Rajendra Nagar, Katora Talab, Raipur, Presently At Village- Raikona, Thana And Tah. Sarsinva, District :

Balodabazar-Bhathapara, Chhattisgarh (Owner of White Scorpio Jeep No.CG-04-HB 8153)

7. Rajkumar, S/o Babulal Ratre, Occupation Driver, R/o Jogesara, Thana And Tah. Sarsinva, District : Balodabazar-Bhathapara, Chhattisgarh (Driver of White Scorpio Jeep No.CG-04-HB 8153)

----Respondents

For Appellants/Claimants	: Shri HS Patel , Advocate
For Respondents-1 and 2/Owner and Driver	: None appears
For Respondent-3/Insurance Company	: Shri SS Rajput, Advocate

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

Per Parth Prateem Sahu, J.
17.09.2020

1. Both these appeals are arising out of the common award dated 01.01.2014 passed in Claim Case- 16 of 2012 by Additional Motor Accident Claims Tribunal, Sarangarh (for short,'Claims Tribunal'). Hence, both these appeals are being disposed off by this common order.

2. MAC-426 of 2014 is filed by the claimants for enhancement of compensation and MAC-604 of 2014 is filed by the Insurance Company challenging the impugned award on the ground that the vehicle said to be involved in this case is, in fact, not involved in the accident, rather, some other Scorpio bearing No.CG 06-0007 (blue color) was involved and the claimants have falsely implicated the Scorpio bearing No.CG 04 HB 8135 (white color) in the claim case.

3. Brief facts of the case are that, on 24.02.2012 at about 5.30 pm, Mangal Maitri (since deceased) and Shyamlal, both were travelling separately, on their

own bicycles and returning their house from Timarlaga. When they were in between Timarlaga barrier and Petrol Pump, at that relevant time, one Scorpio bearing No.CG 04 HB 8153 (white color) (hereafter, referred to as 'offending vehicle') driven by NA2, knocked down the bicycle of Mangal Maitri from its back side and caused accident. In the aforementioned accident, Mangal Maitri suffered grievous injuries and died. The accident was reported to concerned Police Station upon which crime bearing No.42 of 2012 was registered.

4. Claimants, who are widow and children of the deceased filed an application under Section 173 of the Act of 1988 pleading therein that on the date of accident, deceased was aged about 56 years able bodied person, and working as permanent labourer in Public Works Department (PWD), and earning Rs.12,000/- per month. Deceased was also earning Rs.3,000/- per month through agriculture lands, and claimed Rs.28,53,000/- as total compensation.

5. NA1 and 2, owner and driver of offending vehicle submitted their separate reply denying the pleadings made in the claim application. They further pleaded that no accident had occurred from the offending vehicle on 24.02.2012. On enquiry, NA1 and 2 came to know the fact of accident and involvement of one other Scorpio bearing No.CG 06 B 0007 (blue color), driven by one Dev Kumar Sahu, President of Gudeli, dashed the deceased. NA2 submitted that a complaint on 16.03.2012 regarding false implication of offending vehicle in the accident, driven by NA2 was lodged but, no action was taken on the complaint. It was also pleaded that Writ Petition was also filed before the High Court, which is pending. The accident was with blue color Scorpio bearing No.CG 06-B-0007, driven by Dev Kumar Sahu.

6. NA3/Insurance Company submitted reply to claim application and denied the pleadings with regard to the accident and income of the deceased. It was pleaded that the offending vehicle was not involved in the accident. Insurance Company also admitted that the vehicle was insured for a period from 02.04.2011 to 01.04.2012.

7. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record by the respective parties, held that NA2 while driving his Scorpio bearing No.CG 04 HB 8153 rashly and negligently, knocked down Mangal Maitri, and on account of injuries suffered by him, he died. Negligence of deceased was not found to be proved. The accident from the Blue color Scorpio was not found to be proved. False implication of the vehicle, jurisdiction of hearing and also non- joinder of all necessary parties are also not found to be proved. Claims Tribunal assessing income of deceased as Rs.10,575/- per month, awarded a total sum of Rs.4,48,000/- as compensation.

8. Shri HS Patel, learned counsel for the appellants/claimants submits that Claims Tribunal erred in awarding very meagre amount of compensation. He further submits that though the Claims Tribunal has assessed income of deceased as Rs.10,575/- per month, but not awarded any amount towards future prospects as per law laid down by Hon'ble Supreme Court in case of **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680. He further argued that Claims Tribunal has erroneously applied multiplier of 5 instead of 9 in the facts of the case and deducted 1/3rd towards personal and living expenses. He submits that deduction should be 1/4th instead of 1/3rd, as the number of claimants are five.

9. Per contra, Shri SS Rajput, learned counsel for the Insurance Company submits that the Claims Tribunal erred in arriving at a finding that offending vehicle i.e. white Scorpio bearing No. CG 04 HB 8153 is involved in the accident. He submits that the finding recorded by learned Claims Tribunal to this is perverse. He further argued that finding of Tribunal with regard to involvement of vehicle (white Scorpio), insured by the Company has been challenged by the Insurance Company before this Court in MAC- 604 of 2014. In alternate, he argued that amount of compensation awarded to the claimants is just and proper which does not call for any interference.

10. We have heard learned counsel for the respective parties and perused the record of claim case.

11. So far as the appeal (MAC-426 of 2014) for enhancement of amount of award filed by the claimants is concerned, the Claims Tribunal has assessed the income of deceased at Rs.10,575/-, deducted 1/3rd towards personal and living expenses and by applying multiplier of 5, awarded the amount of compensation of Rs.4,23,000/- towards loss of dependency.

12. Claimants proved engagement of deceased in PWD as unskilled labour by placing Ex.P1 dated 20.08.2008 on record. They have also proved his income by placing on record information given by the SDO, PWD, National Highway, Raigarh, as Ex.P2. Income was proved by the claimants through one Vijay Vishwas, Assistant Gr-III, PWD (AW1) in which he stated that total income of deceased on the date of his death was Rs.10,575/-. Learned Claims Tribunal has deducted 1/3rd of proved income towards personal and living expenses ignoring the number of claimants.

13. Deduction towards personal and living expenses has been discussed by Hon'ble Supreme Court in case of **Sarla Verma and others Vs Delhi Transport Corporation and another** reported in (2009) 6 SCC 121 and held that if claimants are 4 -6, deduction towards personal and living expenses should be $\frac{1}{4}^{\text{th}}$. In the case at hand, claimants are 5 in number, therefore, appropriate deduction should be $\frac{1}{4}^{\text{th}}$ instead of $\frac{1}{3}^{\text{rd}}$.

14. Learned Claims Tribunal has arrived at a finding that there is no document available on record to show that deceased was less than 60 years and applied multiplier of 5.

15. Upon going through the records available in claim case, Ex.D4 Naksha Panchnama and Ex.P8 post-mortem report shows the age of deceased as 56 years. Pleadings made in the claim application by the claimants, they have mentioned the age of deceased as 56 years. There is no specific evidence available on record with regard to age, more so, admissible documents to prove the age of deceased in the claim case.

16. Tribunal has assessed the age of deceased in para-26 of the award as in between 60-65 years without any material or assigning any reason to disbelieve the age mentioned in the documents of criminal case. In absence of any documentary evidence with regard to age, normally the age mentioned in the criminal case record can be taken for the purpose of proceedings under Act of 1988 or it can be assessed based on the other incriminating factors available in the record, like age of wife and children show in the claim application.

17. In the case at hand, age shown in documents of criminal case placed on record shows age of deceased to be 56 years, age of wife shown in claim application is 50 years and age of eldest child is shown as 18 years. In the aforementioned facts available on record there was no justification for the Tribunal to overlook the documents and pleadings and assess the age on its own presumption. The age of deceased assessed by the Tribunal as in between 60-65 years is without any evidence or material, it is set aside. The age of deceased can safely be assessed as in between 56-60 years, it is ordered accordingly.

18. Learned Claims Tribunal has further awarded only Rs.25,000/- on other conventional heads, which is also on lower side. The amount of compensation to be awarded to the claimants requires re computation, which is as under:

19. Income of deceased is taken as Rs.10,575/- per month and Rs.1,26,900/- per annum. By adding 15% of his established income towards future prospects, total yearly income of the deceased will come to Rs.1,45,935/- $\{126900 + (126900 \times 15/100)\}$. Number of claimants are five and therefore, appropriate deduction towards personal and living expenses would be $1/4^{\text{th}}$. After deducting $1/4^{\text{th}}$ towards personal and living expenses, loss of yearly dependency will come to Rs.1,09,451/- $\{145935 - (145935 \times 1/4)\}$. As we have held age of the deceased between 56-60 years, appropriate multiplier would be 9 instead of 5 as applied by Claims Tribunal. By applying the multiplier of 9 to the yearly loss of dependency, total loss of dependency comes to Rs.9,85,059/- (109451×9) .

20. Apart from above, the claimants are further entitled for Rs.40,000/- towards spousal consortium, Rs.40,000/- towards parental consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

21. Now, total compensation to be awarded to the claimants is **Rs.10,95,059/-** instead of Rs.4,48,000/- as awarded by learned Claims Tribunal.

22. Aforementioned total amount of compensation shall carry interest @ 6% from the date of filing of claim application till its realization.

23. Except conditional interest, other conditions imposed by learned Claims Tribunal shall remain intact.

24. So far as the appeal filed by Insurance Company challenging the finding recorded by the learned Claims Tribunal with regard to involvement of the offending vehicle is concerned, we have perused the records of the claim case.

25. Non-Applicants have placed on record copy of FIR as Ex.D3. FIR was lodged on 24.12.2012 i.e on the same date when the accident took place. In the FIR, it is specifically mentioned that the vehicle involved in the accident is white color Scorpio. In Ex.D4 Naksha Panchnama, it is further mentioned by the Panch witnesses that Mangal Maitri died on account of motor accident by one Scorpio vehicle near Timarlaga. The police, after investigating the case submitted, Final Report vide Ex.P4 for offences punishable under Sections 304, 279 and 337 against the driver of offending vehicle. The Police has seized the offending vehicle from village Timarlaga, Main Road. Claimants in their

claim application pleaded about the involvement of the offending vehicle and it was proved by one Pramod Khes, AW2, the Officer In-charge of Police Station.

26. Case of the claimants before this court is that NAW1 Rajkumar driver of offending vehicle filed a complaint on 16.03.2012. The affidavit was also filed on record mentioning therein that accident took place with vehicle CG06-D-0007 driven by one Devkumar Sahu in which he was also one of the occupants. The respondents have examined Rajkumar as NAW1, Shyamlal as NAW2, Sahnu as NAW3, Mayaram as NAW4, Gayaram as NAW5, and Sanjay Kumar as NAW6. Though the affidavit of Mansingh Nishad was filed as Ex.D7, but he was not examined before the Claims Tribunal. In the evidence of Shyamlal NAW2 he admitted that for the first time before the Tribunal he is mentioning that the accident took place with Blue Scorpio vehicle and he has not stated this fact to any one else. Upon going through the evidence of Sahnu, NAW3, it goes to show that he is not aware of the number of offending vehicle though he stated that he saw the accident. Mayaram, NAW4 who is said to be a Government Employee, has not filed any complaint against the Police Official though in his evidence he stated that the Police officials abused him at the time of seizer of offending vehicle. Gayaram NAW5 who in his evidence admitted that the affidavit which he has filed does not mention the Scorpio bearing No.CG 06 B-0007 to be the offending vehicle. Upon going through the evidence placed on record by NA1 and NA2, there is no specific mention of involvement of the other vehicle. The person Mansingh whose affidavit has been placed on record to show that the other vehicle was involved in accident, was not examined before Claims Tribunal.

27. Writ Petition (Cri) 72 of 2012 filed by Gayram and Rajkumar challenging the charge-sheet submitted before the Judicial Magistrate First Class, Sarangarh was disposed to avail proceeding u/s 482 of the CrPC, but it is not submitted that any petition u/s 482 of the CrPC was filed and if filed, what happened to that proceeding.

28. In view of the above discussion, we do not find any substance in the submission of Shri Rajput that the vehicle insured by the company is falsely implicated in the accident.

29. The other ground taken by the insurance company in this appeal is the award of conditional interest of 9% if the amount is not deposited within the period of 30 days from passing of the award.

30. Award of interest has been prescribed under Section 171 of the Act of 1988, wherein there is no provision of awarding conditional interest if the amount is not deposited within the period prescribed, but it mentions about award of simple interest only.

31. In view of the above, award of interest @9% if the amount of compensation is not deposited within a period of 30days is hereby set aside. The amount of compensation shall carry interest @ 6% from the date of filing of claim application till its realization.

32. In view of the above, MAC-426 of 2014 filed by the claimants is allowed in part and amount of compensation is enhanced from Rs.4,48,000/- to **Rs.10,95,059/-**. The amount of compensation shall carry interest @ 6% from

the date of filing of claim application till its realization. The liability to satisfy the amount of compensation shall be upon NA-3 Insurance Company.

33. MAC 604 of 2014 filed by the Insurance Company is allowed in part. The award of conditional interest @ 9% is set aside and now the amount of compensation shall carry simple interest @ 6% from the date of filing of claim application till its realization.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge