

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 766 of 2012**

1. Kamal @ Gappu Sahu, S/o Pannalal Aged About 47 Years (Driver)
2. Kumari Meera Sahu D/o Pannalal Sahu, Aged About 23 Years (Owner)

Both are r/o village- Rest House Road, Gaurela, District : Bilaspur, Chhattisgarh

---- Appellants

Versus

1. Smt.Rekha Bai, Wd/o Late Ramesh Nai, Aged About 30 Years
 2. Ku. Priyanka, D/o Late Ramesh, Aged About 13 Years, Minor
 3. Prithvi Kumar, S/o Late Ramesh, Aged About 10 Years Minor
- 2 & 3 are minors thru.- Natural Guardian Mother- Smt. Rekha Bai, wd/o late Ramesh Nai

All are R/o village Nevsa, P.S. Gaurela, Distt. Bilaspur, Chhattisgarh

----Respondents

For Appellants	:	Shri Ashok Soni, Advocate
For Respondents	:	None appears

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

Per Parth Prateem Sahu, J.
22.07.2020

1. Appellants, who are Driver and Owner of offending vehicle have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the impugned award dated 09.05.2012 passed in Claim Case- 34 of 2011 by the Additional Motor Accident Claims Tribunal, Pendra Road, District Bilaspur (for short, 'Claims Tribunal'), whereby learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs.3,21,500/- as compensation in a death case.
2. Facts relevant for disposal of this appeal are that on 09.10.2008 at about 8 pm, Ramesh Nai (since deceased) was riding on his Bicycle towards his house. While so, when he reached near village- Gorakhpur, NA1 driving his Motorcycle bearing No.CG 10-2519 (hereafter, referred to

as offending vehicle) rashly and negligently, dashed the Bicycle of Ramesh Nai and caused accident. In the said accident, Ramesh Nai suffered grievous injuries over his person, he was taken to the Hospital, Pendra Road, where, during the course of treatment, he died.

3. Respondents- 1 to 3/Claimants, who are wife and children of the deceased Ramesh Nai filed claim application under Section 166 of the Motor Vehicle Act, 1988 seeking compensation of Rs.8,30,000/- on account of untimely motor accidental death of late Ramesh Nai, pleading therein that the deceased on the date of accident was aged about 32 years, earning Rs.6,000/- per month from Hair Saloon.

4. NA-1 and 2, driver and owner of offending vehicle submitted joint reply to the claim application and denied the entire pleadings. They have pleaded that date of accident was shown to be 09.10.2008 but FIR was lodged with long delay, on 07.11.2009. False and fabricated report has been lodged against the Non-Applicants. No accident occurred from the offending vehicle. Amount of compensation in the claim application is highly exaggerated and further that the application sent for post-mortem mentions the deceased suffered injuries on account of falling from his Bicycle.

5. Initially, learned Claims Tribunal dismissed the claim application on 21.09.2010, and challenging that order, claimants filed MAC-752 of 2011 before this Court, which came to be allowed partly, the award passed by learned Claims Tribunal dated 21.09.2010 was set aside and the matter was remitted back to the Claims Tribunal for deciding the case afresh. After remand of the case, learned Claims Tribunal after granting an opportunity of hearing to all the parties in terms

of the remand order, allowed the claim application by impugned order dated 09.05.2012 and awarded a total sum of Rs.3,21,500/- as compensation.

6. Learned counsel for the appellants submits that learned Claims Tribunal has not considered the entire material and evidence available on record and passed the impugned award holding that the accident was result of rash and negligent driving of offending vehicle by NA-1. Learned Claims Tribunal has not considered Ex.P2 and P3, documents of Criminal case ie Merg intimation, wherein it is specifically mentioned that the deceased fell down from his own Bicycle. He contended that FIR regarding the accident was lodged only on 07.11.2009 after more than a year of the accident which makes the story mentioned by the claimants in their claim application to be suspicious. The evidence of Kaushal Singh Rathore AW2 and Ram Prasad Rathore AW3 are inducted witnesses and therefore, their testimony cannot be accepted as eyewitness. He also submits that the credibility of the witness can be ascertained only from his statement, where he stated that Bajaj (two wheeler) was involved in the accident, whereas offending vehicle mentioned in the claim application shows involvement of Hero Honda Street, two wheeler.

7. No one appears on behalf of the respondents.

8. We have heard Shri Ashok Soni, learned counsel for the appellants and perused the record.

9. Pleadings made in the claim application show that date of accident is 09.10.2008 at about 8 pm; they have pleaded that the accident was orally intimated to the concerned Police Station but they have denied to record the FIR on the ground that after receiving intimation from the Police Station Pendra, her statement will be recorded. After lapse of long time when no action was taken,

Claimant-1 submitted an application/complaint before the Additional Superintendent of Police, Pendra Road. Only after that, investigation started and Criminal Case was registered against NA1, rider of offending vehicle.

10. In reply to the claim application, NA1 and 2, mentioned that after a long time of the death of a person false report was lodged against them.

11. Perusal of copy of FIR would show that date of accident was 09.10.2008 and FIR was lodged on 07.11.2009. Post-mortem report of the deceased is filed as Ex.A6 in which it is mentioned that the dead-body of deceased was sent for post-mortem on 10.10.2008, ie the very next day of the accident. Mode of death is shown as Cardiac respiratory arrest due to brain haemorrhage and injuries are found to be anti-mortem. After investigation of the crime, Ex.A9 Final report was submitted by Investigating Agency before the Judicial Magistrate First Class, Pendra Road considering the statement of eyewitnesses. Claimants have further placed on record Ex.A10, copy of application/complaint dated 03.11.2008 made by claimant-1 in which it is mentioned that NA1 caused accident from his Motorcycle to deceased, he was taken to the hospital, where he succumbed to the injuries. In that application, it is also mentioned that orally the accident was intimated to the Gaurela Police Station but they have refused to record the complaint and stated that they will initiate proceeding only after receipt of the report from Pendra Police Station. But, till the date of filing of complaint to the Higher Officers, no action was taken. From the aforementioned facts available on record, it is apparent that immediately after the accident, deceased was taken to his house from where he was taken to the hospital and he died during the course of treatment within few hours of his admission to the hospital.

12. Claimants have filed Ex.A10 to show that they made complaint against the in-action on the part of the Officers of the Police Station, Gaurela. FIR was lodged only on the basis of complaint made by claimant-1.

13. Applicant-1 Rekhabai was examined as AW1. In her evidence, she placed on record all the relevant documents including documents prepared by the Police. In her cross-examination she categorically stated that deceased prior to his death informed her that Gappu Sahu, NA1 caused the accident. She further stated that before making complaint, she approached the concerned Police Station on 3-4 occasions.

14. Claimants have examined AW2 Mahesh Dhar Mishra, who in his evidence stated that NA1, while driving the offending vehicle rashly and negligently, dashed the Bicycle of deceased Ramesh Nai due to which he fell down from his Bicycle. He stated about the fact of accident from Motorcycle of NA1. This witness was cross-examined at length but no contrary statement came out from this witness. The statement/evidence made in support of the accident caused by Gappu Sahu, this witness further stated that he saw NA1 lifting his Motorcycle and lying deceased on spot. Claimants have further examined AW3, Ram Prasad Rathore to be eyewitness to the accident. He stated that the accident took place in front of his house and upon going to the injured, he asked for some water, which he gave him and thereafter, injured slowly went to his house. He also stated that NA1 ran away. This witness in para-12 of his cross-examination very categorically stated that he identified both the drivers ie rider of offending vehicle and Bicycle.

15. Considering these evidences available on record, particularly evidence of AW1 Rekhabai, AW2 Mahesh, and AW3 Ram Prasad Rathore, the ground raised

by learned counsel for the appellants that offending vehicle is not involved in the accident not appears to be correct.

16. So far as the recording of FIR after delay of more than a year, Claimant-1 has given an explanation that she made oral complaint immediately after the accident, but the Officer at Gaurela Police Station has not recorded her complaint. Then she made Ex.A10, written complaint to the Higher Police Officers and only thereafter, FIR has been lodged. Ex.A10 has not been controverted by the appellants before learned Claims Tribunal by producing any evidence. Before this Court also, learned counsel for the appellant has not made any argument with regard to document Ex.A10.

17. In our considered view, the claimants have explained the delay in lodging the FIR. Even otherwise, Hon'ble Supreme Court in the case of **Ravi Vs Badrinarayan and others** reported in **2011 4 SCC 693** has held that mere delay of lodging FIR will not oust the claimants to get just compensation in an injury or death case of motor accident claim case. It is further held that in such cases, the evidence to be examined with close scrutiny.

18. On going through evidences of NAW1 and 2 also, it does not reveal that they are implanted witnesses but it is apparent that they have witnessed the accident and NA1 was found to be driver of offending vehicle at the time of accident. He was seen on spot lifting his Motorcycle and running away by witness.

19. Learned Claims Tribunal initially, dismissed the claim application on the ground that the claimants produced documents of Criminal case but not exhibited the same and also on the ground that the deceased himself fell down from Bicycle. This Court while dealing with the appeal filed by the claimants (MAC-752

of 2011), has taken note that learned Claims Tribunal has not conducted enquiry as envisaged under Section 168 of the Motor Vehicle Act and set aside the award and remitted back the case for passing the award afresh.

20. Learned Claims Tribunal on appreciation of evidence placed on record has passed the impugned award. Learned Claims Tribunal has taken note of the registration of FIR against NA1/appellant-1 herein, followed by submission of Final Report after completion of investigation for offences under Section 304 A IPC.

21. The claim case filed before learned Claims Tribunal is required to be decided on the touch stone of preponderance of the probabilities. When once after completion of the investigation, recording statement of witnesses under Section 161 of CrPC, investigating agency has filed charge-sheet against the driver of offending vehicle, then it cannot be said that the offending vehicle itself was not involved in the case particularly looking to the evidence of AW2 and 3, who have been examined as eyewitnesses .

22. For the foregoing reasons, we do not find any merit in this appeal, which is liable to be and is hereby dismissed.

23. So far as the cross-objection filed by the claimants which was admitted on 11.07.2013, the claimants have raised three grounds for enhancement of compensation. They have pleaded that learned Claims Tribunal assessed the monthly income of the deceased on lower side; the age of the deceased has wrongly been held as 46 years instead of 33 years and further not awarding adequate amount of compensation on other conventional heads.

24. The ground taken by the claimants with regard to the income of the deceased is concerned, learned Claims Tribunal has assessed income of the deceased as Rs.3,000/- per month and Rs.36,000/- per annum. Learned Claims Tribunal has assessed income of deceased taking into consideration that the claimants failed to prove monthly income of the deceased by placing cogent and reliable piece of evidence. Further learned Claims Tribunal has taken note of evidence of AW1 Rekhabai, wherein she admitted that they are having Ration Card of BPL category (Below Poverty Line) and her admission that the deceased was a person living below poverty line.

25. In view of above evidence of AW1, widow of deceased and further taking into consideration that no documentary evidence has been placed on record by the claimants to prove the income, we are of the view that learned Claims Tribunal has rightly not accepted the monthly income of the deceased as Rs.6,000/- per month as pleaded in claim application. But learned Claims Tribunal assessed his income on lower side while assessing the income of the deceased on notional basis. Looking to the date of accident, place of residence and the price index as well, as the liability upon the deceased was to maintain four family members, including himself, we find it appropriate to assess the income of the deceased as Rs.4,000/- per month on notional basis. So far as the ground raised with regard to age of the deceased, there is no documentary evidence placed on record by the claimants regarding his age.

26. Learned Claims Tribunal has taken age of the deceased as it was mentioned in Ex.P2 and P3, documents of Criminal case, wherein age of the deceased is mentioned as 60 years. In the post-mortem report, age of the deceased has been shown as 34 years. Learned Claims Tribunal has further taken note of evidence of AW3 Ram Prasad, who in his evidence stated that he

was aged about 50 years and age difference between him and deceased is of 2-4 years. Considering this evidence, learned Claims Tribunal has recorded age of the deceased as 46 years, which in the opinion of this Court, cannot be said to be erroneous, when the evidence of AW3, Ramprasad Rathore has been accepted by learned Claims Tribunal as eyewitness to the accident.

27. Pleading made by the claimants/respondents in their cross-examination that learned Claims Tribunal erred in recording the age of the deceased as 46 years to be erroneous is not sustainable and it is hereby repelled.

28. The last ground which is raised in the cross appeal is with regard to the award of meager amount on other conventional heads.

29. Award of compensation on other conventional heads has been decided by Hon'ble Supreme Court in **National Insurance Company Vs Pranay Sethi** reported in **2017 16 SCC 680** and also in case of **Magma General Insurance Company Limited Vs Nanu Ram** reported in 2018 ACJ 2782. Now, claimants are entitled for an amount as per the guidelines of these judgments.

30. For the foregoing discussion, amount of compensation requires re-computation and reconsideration.

- a) As we have assessed monthly income of deceased as Rs.4,000/-, his yearly income would be Rs.48,000/- (4000 x 12).
- b) As deceased on the date of accident, was less than 50 years of age and therefore, there will be an addition of 25% of established income towards future prospects. Now, total yearly income of the deceased comes to Rs.60,000/- {48000 + (48000 x 25/100)}.
- c) There will be 1/3rd deduction towards personal and living expenses of the deceased, as there are three dependants on the deceased. By deducting

1/3rd from total yearly income, yearly loss of dependency of the claimants would come to Rs.40,000/-.

d) Looking to the age of the deceased as 46 years, appropriate multiplier would be 13. By multiplying yearly loss of dependency with multiplier of 13, total loss of dependency of the claimants comes to Rs.5,20,000/-.

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

31. Now, appellants / claimants are entitled for a total sum of **Rs.6,30,000/-** (520000 + 40000 + 40000 + 15000 + 15000) as compensation instead of Rs.3,21,500/- as awarded by learned Claims Tribunal.

32. Aforementioned amount will carry interest @ 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal will remain intact.

33. In the result, the appeal filed by the appellants/Driver and Owner of offending vehicle is dismissed and the Cross objection filed by the respondents/claimants is allowed in part and the impugned award is modified accordingly.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge