

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 921 of 2014

1. Nandu Ghasiya, S/o Ramgulam Ghasiya Aged About 26 Years (Driver).
2. Rambriksh Yadav S/o Devroop Yadav Aged About 59 Years (Owner).

Both resident of Belkurta, P.S. Ramchandrapur, Distt. Balrampur-Ramanujganj, Chhattisgarh.

---- Appellants

Versus

- Smt. Fhuljhariya wife of Late Ramvichar, aged about 50 years, R/o Belkurta, P.S. Ramchandrapur, Distt. Balrampur-Ramanujganj, Chhattisgarh

---- Respondent

&

MAC No. 1169 of 2014

- Smt. Phuljhariya, W/o Late Ramvichar, aged about 50 years R/o Belkurta, P.S. Ramchandrapur, Distt. Balrampur-Ramanujganj, Chhattisgarh

---- Appellant

Versus

1. Nandu Ghasiya, S/o Ramgulam Ghasiya, aged about 26 years
 2. Ramvriksha Yadav S/o Devroop Yadav Aged About 59 Years
- Both residents of village Belkurta, P.S. Ramchandrapur, Distt. Balrampur-Ramanujganj, Chhattisgarh

---- Respondents

MAC No.921/2014

For Appellants : Mr. CJK Rao, Advocate,
For Respondent : Mr. V.K. Pandey, Advocate

MAC No.1169/2014

For Appellant : Mr. V.K. Pandey, Advocate
For Respondents : Mr. CJK Rao, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

10/07/2020

1. Since both the above appeals arise out of the same accident and common award dated 21.7.2014 passed by the Additional

Motor Accident Claims Tribunal, Ramanujganj, District Balrampur Ramanujganj (for short 'the Claims Tribunal'), they are being decided by this common order.

2. MAC No.921/2014 has been preferred by the driver & owner of the tractor-trolley bearing registration Nos.CG15-A-8050 & CG15-A-8052 respectively (henceforth 'the offending vehicle') challenging the legality and validity of the award dated 21.7.2014 passed in Claim Case No.97/2012 by which learned Claims Tribunal partly allowed claim application of claimants and awarded a sum of Rs.2,44,000/- as compensation in a death case. Whereas, the claimant has preferred MAC No.1169/2014 seeking enhancement in the amount of compensation awarded by the Claims Tribunal.
3. Facts of the case giving rise to these appeals may be summarized thus. Sandu, aged about 16 years, was working as 'labourer' on the offending vehicle, which was owned by non-applicant No.2. On 12.6.2012 when said Sandu was travelling on the offending vehicle and returning to his village after unloading the sand of the trolley attached with the tractor in question, on account of rash and negligent driving by non-applicant No.1, said Sandu fell down on the road and came under the wheel of the offending vehicle and consequently died. Accident was reported to the concerned police station based on which crime bearing No.22/2012 for the offence under Section 304A of the Indian Penal Code was registered against non-applicant No.1-driver of offending vehicle.
4. The claimant, who is mother of deceased, filed claim

application seeking an amount of Rs.6,25,000/- as compensation mentioning therein that on the date of accident, the deceased was 16 years old and earning Rs.4,500/- per month by doing the work of 'labourer'.

5. Non-applicants No.1 & 2, driver & owner of offending vehicle, have jointly filed their written statement to claim application and denied the contents made therein, particularly the fact that deceased met with accident when he was travelling as Labourer on the offending vehicle. They have pleaded that deceased never worked as labourer with non-applicant No.2. On the date of accident, when non-applicant No.1 & others was returning to their village, on the way they saw a person lying beside the road in injured condition and after identifying the injured to be 'Sandu' of their village, they firstly brought him to his house and thereafter they took him to the hospital where he died.
6. On the basis of pleadings of both sides, the Claims Tribunal has framed as many as 04 issues for consideration and after appreciating the pleadings and evidence placed on record by the respective parties, has partly allowed claim application and awarded a total amount of Rs.2,44,000/- as compensation by recording that deceased Sandu met with accident while returning home on the offending vehicle on account of rash and negligent driving of non-applicant No.1.
7. Mr. CJK Rao, learned counsel representing appellants in MAC No.921/14 would argue that the Claims Tribunal failed to consider the pleadings and evidence adduced by appellant in

its proper perspective and erroneously arrived at a conclusion that the deceased died due to rash and negligent driving of offending vehicle by its driver. Non-applicants/appellants herein have examined non-applicant No.1 as NAW-1, Gudni as NAW-2, Mujahid Hussain as NAW-3 and they have categorically deposed in their statement that while returning to village Belkurta on the offending vehicle, driven by non-applicant No.1, on the way they found Sandhu lying beside the road in injured condition, but, the Claims Tribunal disbelieved their version and erroneously held that the deceased died of motor accidental injuries on account of rash and negligent driving by non-applicant No.1. In alternate, he submits that the amount of compensation awarded by the Claims Tribunal is on higher side in the given facts and circumstances of the case.

8. Per contra, Mr. V.K. Pandey, learned counsel for the claimant/appellant in MAC No.1169/2014 submits that the award passed by the Claims Tribunal is based on proper appreciation of evidence available on record. From the evidence adduced by the non-applicants, driver & owner of offending vehicle, it is apparent that in order to suppress the factum of accident, the witnesses of non-applicants have deposed an imaginary story concocted by the non-applicants. Pleadings made in the claim application with respect to engagement of deceased with non-applicant No.2, owner of offending vehicle, itself is supported by the witnesses examined on behalf of non-applicants. The Claims Tribunal upon appreciation of evidence adduced by the respective parties as

also considering the facts of the case has arrived at a right conclusion that deceased was engaged by non-applicant No.2 and died on account of injuries sustained by him in the accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1.

As regards quantum of compensation, Mr. Pandey submits that compensation awarded by the Claims Tribunal is on lower side and requires enhancement. He submits that no amount towards future prospects has been awarded by the Claims Tribunal and even multiplier of 13 has wrongly been applied on the basis of age of the mother of the deceased. The amounts awarded under other conventional heads are also on lower side and need to be enhanced. Thus it is clear that quantum of compensation awarded by the Claims Tribunal is inadequate and it needs to be suitably enhanced.

9. Mr. Rao, learned counsel representing appellants in MAC No.921/14 submits that the Claims Tribunal has rightly applied the multiplier because on the date of accident, there is only one claimant i.e. mother of deceased aged about 50 years. The amounts awarded under other conventional heads is also just and proper and do not call for any enhancement.
10. We have heard learned counsel for the parties and perused records of the Claims Tribunal.
11. So far as MAC No.921/14 preferred by non-applicants, driver & owner of offending vehicle, challenging the impugned award on the ground that the offending vehicle was falsely involved in the accident as no accident had taken place by the offending

vehicle, is concerned, perusal of reply submitted by non-applicants to claim application reveals that the non-applicants have pleaded therein that deceased Sandu was never engaged as Labourer by non-applicant No.2 on the offending vehicle much less on the date of accident. It is further mentioned that on the date of accident, when non-applicant No.1 and other labourers were returning to their village on the offending vehicle, being driven by non-applicant No.1, near Gajjar Road they saw a person lying beside road in unconscious condition with injuries. Said person was identified by the labourers travelling on the offending vehicle as Sandhu of their village, therefore, he was put on the offending vehicle with the help of labourers and brought to the village.

12. Perusal of the contents of FIR (Ex.A-1) of the accident lodged against non-applicant No.1-driver of offending vehicle, reveals that it was lodged at 11.45 p.m. on 12.6.2012 mentioning that the accident occurred on the same day at about 8.00 p.m. The offending vehicle was seized on 5.7.2012 vide seizure memo of Ex.A-3. On completion of investigation, the police filed charge sheet against non-applicant No.1/appellant No.1 in MAC No.921/14 before the Court of competent jurisdiction.
13. The claimant in support of her case that deceased died due to rash and negligent driving of offending vehicle by its driver, has examined three witnesses including herself.
14. Non-applicant No.1, who was examined as NAW-1, has filed his examination-in-chief in the shape of an affidavit under Order 18 Rule 4 of the Code of Civil Procedure, 1908, which is in

consonance to what has been stated by him in reply to claim application. He did not state as to what steps were taken by them against their false implication in a criminal case. In the cross-examination, he has admitted that the custody of offending vehicle was taken by non-applicant No.2 and that he has not made any complaint to anyone against his false implication in a criminal case.

15. Kamlesh was examined on behalf of non-applicants as NAW-2 and he has admitted in his cross-examination that the deceased was working with non-applicant No.2 as labourer for loading and unloading the materials like sand, stone ballast etc., in the offending vehicle. In Para-5 of the cross-examination this witness has admitted that it is non-applicant No.2 who had sent the deceased to the hospital at Ramanujganj for treatment.
16. Gudni (NAW-3) has admitted in her statement that the deceased used to do the work of loading & unloading of sand, bricks in tractor and that non-applicant No.2 has one tractor in which he used to transport sand, stone ballast, bricks etc. However, she has denied the fact that deceased Sandu mostly do the work of loading and unloading of sands, bricks & stone ballast in the tractor of non-applicant No.2-Rambriksh.
17. Mujhahid Hussain (NAW-4) has stated in his statement that while crossing the road, the deceased met with an accident with one pick-up vehicle and he had seen the accident from his house situated at a distance of 100 meter from the main road of village Ganjar. This witness has admitted that after the

accident, he neither called the ambulance nor informed the police about the accident as there was no signal in his mobile. He has further stated that he had gone to arrange motorcycle to take the injured to the hospital, however, after about half-an hour when he returned to the spot, he came to know that the injured was taken on a tractor. He admitted that he has not informed about the accident to his neighbourers.

18. Minute scrutiny of the evidence of Mujahid Hussain (NAW-4) makes it clear that he is a planted witness and his evidence is not at all reliable. According to this witness, he used to tie his cattle everyday at about 5-6 p.m. in the evening after returning from grazing field. On the date of accident also, when he was tying his cattle, he saw that one boy, who was trying to cross the road, was hit by a pick-up vehicle. Whereas in the FIR (Ex.A-1) the time of accident is mentioned as 8.00 p.m. much after the time when this witness used to tie his cattle everyday. Furthermore, after the accident, this witness instead of informing his neighbourers or the police about the accident or calling ambulance, had gone to arrange a motorcycle and when he came back on spot after half-an hour, he was informed that the injured was taken away on a tractor. However, he has not disclosed as to who had informed him this fact. Most importantly, the non-applicants have not examined any other witness i.e. neighbourers of Mujahid Hussain (AW-4) to corroborate testimony of Mujahid Hussain (AW-4). Thus the conduct of this witness in not informing his neighbourers, the police about the accident and calling for the ambulance

coupled with discrepancy in respect of time of accident goes against the reliability of the evidence of this witness. Hence, the Claims Tribunal has not committed mistake in discarding the evidence of Mujahid Hussain (AW-4).

19. Upon analysis of evidence adduced by non-applicants / appellants in MAC No.921/2014, we are of the view that they have not approached the Claims Tribunal with clean heart and hands. A concocted story was cooked-up by non-applicants/ appellants in their reply to claim application to avoid liability of payment of compensation for the death of deceased. The witnesses examined on behalf of non-applicants have stated in clear term that prior to accident in question, the deceased was working on the offending vehicle, but non-applicants / appellants in their reply have pleaded that deceased never worked for non-applicant No.2, which clearly goes to show that they have not pleaded true and correct facts in their reply. This apart, neither the owner of offending vehicle nor his son had entered into the witness box to rebut the version of the claimant. Even they have not made any complaint to superior police officers or authority against their false implication in a criminal case.
20. For the foregoing discussions, we are of the considered view that the Claims Tribunal has not committed any illegality or infirmity in arriving at a conclusion that deceased died due to rash and negligent driving of offending vehicle by its driver.
21. Now we shall proceed to deal with quantum of compensation awarded to the claimant.

22. Perusal of the impugned award reveals that the Claims Tribunal in absence of any documentary evidence establishing monthly income of deceased, has taken monthly income of deceased as Rs.3,000/- for the purpose of calculating the loss of dependency, which, in our considered opinion, is erroneous as it is not in accordance with the guiding factors laid down by Hon'ble Supreme Court in catena of decisions to determine notional monthly income of deceased. From the evidence available on record, it is evident that deceased was working as labour and the accident pertains to the year 2012. Therefore, looking to the price index, inflation rate and minimum wage rate prevailing on the date of accident in the District concerned and the State of Chhattisgarh, it will be appropriate to assess monthly income of deceased at Rs.4,000/- in place of Rs.3,000/- as assessed by the Claims Tribunal.
23. Perusal of the impugned award further reveals that the Claims Tribunal has not awarded any amount towards future prospects ignoring the decision of Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. vs. Pranay Sethi & ors** reported in **(2017) 16 SCC 680** wherein it has been held that while determining income, an addition of 40% of established income of deceased towards future prospects, where the deceased was self-employed or not on a fixed salary and was below the age of 40 years, is to be made. In case at hand, on the date of accident, the deceased was shown to be about 16 years of age, as mentioned by claimant in claim application and stated in her statement, and hence the claimant is entitled for

addition of 40% of the established income of the deceased towards future prospects.

24. Likewise, the Claims Tribunal has applied multiplier of 13 considering the age of the claimant, mother of deceased, which is erroneous. The Claims Tribunal ought to have applied the multiplier taking into consideration the age of deceased on the date of accident. The issue that multiplier is to be applied considering the age of deceased, even if he is a bachelor, is no longer *res integra*. The Supreme Court in the case of **Sube Singh & another Vs. Shyam Singh (dead) & others** reported in **(2018) 3 SCC 18** has held thus:-

"On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (*supra*), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more *res integra*. In the case of Munna Lal Jain (*supra*) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants."

25. In the present case, the deceased was about 16 years of age on the date of accident, therefore, in consonance with the decision of Hon'ble Supreme Court in the case of **Sarla Verma & ors Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 21**, multiplier of '18' is to be applied and not of '13' as applied by the Claims Tribunal.
26. We have noticed that the amounts awarded by the Claims Tribunal under other conventional heads i.e. Rs.5,000/- for

funeral expenses and Rs.5,000/- for loss of estate, are also on lower side in view of decision of Hon'ble Supreme Court in the matter of Pranay Sethi (supra) & **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130**, and the same need to be suitably enhanced.

27. In view of above, this Court proposes to recalculate amount of compensation payable to claimant/appellant in MAC No.1169/2014.
28. Accordingly, the monthly income of deceased is taken as Rs.4,000/-, as held above, and annual income of deceased as Rs.48,000/-. Since at the time of accident the deceased was below the age of 40 years and was self-employed, in view of law laid down in the matter of **Pranay Sethi's case** (supra), annual income of deceased is required to be increased by 40% towards future prospects, which comes to Rs.67,200/- (48000+19200). Since the deceased was a bachelor and claim petition was filed by his mother, 50% of his income is to be deducted towards his personal & living expenses. After deducting 50%, the annual loss of dependency comes to Rs.33,600/-. By applying multiplier of 18, as held above, to annual loss of dependency, total loss of dependency would come to Rs.6,04,800/- (33600x18). Besides this, appellant in MAC No.1169/14 is entitled for a sum of Rs.40,000/- for filial consortium, as held by Hon'ble Supreme Court in the matters of Magma General Insurance Company (supra). In addition to aforesaid amount, she is also entitled to get a sum of

Rs.15,000/- for funeral expenses & Rs.15,000/- for loss of estate. Thus, appellant in MAC No.1169/14 is entitled for a total sum of Rs.6,74,800/- (604800+40000+ 15000+ 15000) as compensation. This amount of compensation shall carry simple interest @ 7% p.a. from the date of filing of application till actual realization. Rest of the conditions mentioned in the impugned award shall remain intact.

29. In the result;

- MAC No.921/2014 filed by appellants-driver & owner of offending vehicle, being meritless is hereby dismissed.
- MAC No.1169/2014 filed by claimant/appellant, mother of deceased, is allowed in part.
- The impugned award is modified to the extent indicated above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

roshan/-