

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on 05.02.2021Order pronounced on 07.06.2021**MAC No. 1059 of 2012**

- Bajaj Allianz General Insurance Company Limited, Thru- Branch Office At Shiv Mohan Bhawan, Vidhan Sabha Road, Raipur, Tah. and Distt. Raipur C.G., Chhattisgarh.

---- Appellant

Versus

1. Mrs. Tapeshwari W/o Late Basant Kumar Mahto Aged About 23, Years,
2. Kumari Radhika D/o Late Basant Kumar Mahto Aged About 3 Years Minor,
3. Ku. Pinky D/o Late Basant Kumar Mahto Aged About 1 Years Minor,
[Respondents No.2 & 3 Minor through Mother- Mrs. Tapeshwari W/o Late Basant Kumar Mahto, All R/o Risdi, P.S. Kusmunda, Tah. Katghora, Distt. Korba C.G., District : Korba, Chhattisgarh
4. Bali Mahto W/o Late Sashi Bhusan Mahto Aged About 60 Years, R/o Hardi Bazaar, P.S. Pali, Distt. Korba C.G., District : Korba, Chhattisgarh
[R 1 to 4 Claimants]
5. Ramesh Kumar Sao S/o Karam Dev, Aged About 40 Years, Navadih, P.S. Khajuri, Distt. Palamu Jharkhand, District : Palamu, Jharkhand
6. Jay Singh S/o Heera Singh Qtr. No. B/51, Urja Nagar, Secl Gewra Project, P.S. Kusmunda, Distt. Korba C.G., District : Korba, Chhattisgarh

---- Respondents

WITH**MAC No. 572 of 2013**

- Bajaj Allianz General Insurance Company Limited, Pandri, P.S. Pandri, Raipur, C/o Aditya Gadge, Auth. Repre., Bajaj Allianz Gen.Insu.Co.Ltd., Arpa Complex, 1st Floor, Shop Np. 13-14, In Front Of Navbharat Press, Near Bus Stand, Bilaspur C.G., Chhattisgarh

---- Appellant.

Versus

1. Bhusal Kosle S/o Bhauram Kosle Aged About 49, caste Satnami,
2. Mayavati Kosle W/o Bhusal Kosle Aged About 40 Years, caste Satnami,
3. Laxmin Bai Kosle W/o Late Laxmi Kosle Aged About 28 Years, caste Satnami,
4. Sushil Kosle S/o Late Laxmi Kosle Aged About 14 Years Minor,
5. Seema Kosle D/o Late Laxmi Kosle Aged About 9 Years Minor,
6. Puja Kosle D/o Late Laxmi Kosle Aged About 6 Years Minor,
7. Rani Kosle D/o Late Laxmi Kosle Aged About 4 Years Minor,

8. Dadu Kosle S/o Late Laxmi Kosle Aged About 2 Years Minor,
[All residents of Village Navagarh, Post- Navagarh, Tah. Navagarh,
P.S. Navagarh, Distt. Janjgir-Champa C.G., District : Janjgir-
Champa, Chhattisgarh. All minors through their mother Smt.
Laxmin Bai] *[R 1 to 8 Claimants]*
9. Ramesh Kumar Sao, S/o Karam Dev, aged about 28 years, R/o
Navadih, P.S. Khajuri, Distt. Palamu, Jharkhand, at present- S.M.S.
Company, Gevra, P.S. Dipika, Distt. Korba C.G., District : Korba,
Chhattisgarh
10. Jay Singh S/o Heera Singh Aged About 60 Years R/o Qtr.No. B/51,
Urja Nagar, Secl Gevra, P.S. Gevra, Distt. Korba C.G., District :
Korba, Chhattisgarh

---- Respondent

WITH

MAC No. 576 of 2013

- Bajaj Allianz General Insurance Company Limited, Pandri, P.S.
Pandri, Raipur, C/o Aditya Gadge, Auth. Repre., Bajaj Allianz
Gen.Insu.Co.Ltd., Arpa Complex, 1st Floor, Shop Np. 13-14, In
Front Of Navbharat Press, Near Bus Stand, Bilaspur C.G.,
Chhattisgarh

---- Appellant.

Versus

1. Smt. Sheela Devi, W/o Late Raghu Chaitamba Aged About 36 Year,
2. Ku. Savita Chaitamba D/o Late Raghu Chaitamba Aged About 19
Years,
3. Ku. Anita Chaitamba D/o Late Raghu Chaitamba Aged About 17
Years, (minor)
4. Ku. Pinki Chaitamba D/o Late Raghu Chaitamba Aged About 15
Years, (minor)
5. Anshik Chaitamba S/o Late Raghu Chaitamba Aged About 15
Years, (minor)
6. Ku. Rina Chaitamba D/o Late Raghu Chaitamba Aged About 6
Years, (minor),
[All R/o Shanti Nagar, P.S. Kusmunda, Distt. Korba C.G., District :
Korba, Chhattisgarh (all minors are through their mother Smt.
Sheela Devi)] *[R 1 to 6 claimants]*
7. Ramesh Kumar Sao S/o Karam Dev Aged About 28 Years R/o
Navadih, P.S. Khajuri, Distt. Palamu, Jharkhand, At Present- S.M.S.
Company, Gevra, P.S. Dipika, Distt. Korba C.G., District : Korba,
Chhattisgarh
8. Jay Singh S/o Heera Singh Aged About 60 Years R/o Qtr.No. B/51,
Urja Nagar, Secl Gevra, PS (Not mentioned in cause title) PS
Gevra, Distt. Korba C.G., District : Korba, Chhattisgarh

---- Respondents

WITH

MAC No. 1060 of 2012

- Bajaj Allianz General Insurance Co. Ltd, Through Branch Office At Shiv Mohan Bhawan, Vidhan Sabha Road, P.S. Pandri, Raipur Tahsil And District Raipur C.G., Chhattisgarh

---- Appellant.**Versus**

1. Mrs. Rajkumari Singh W/o Late Shri Suresh Prasad Singh Aged About 25 Years,
2. Ku. Ishwari Singh D/o Late Shri Suresh Prasad Singh, aged 8 months, (minor through mother Mrs. Rajkumari Singh, W/o Late Shri Suresh Prasad Singh)
3. Ful Singh S/o Late Manjan Singh Aged About 60 Years,
4. Mrs. Jayanti Bai W/o Ful Singh Aged About 55 Years,
[All R. 1 to 4 R/o Shanti Nagar, P.S. Kusmunda, Katghora, Dist. Korba C.G., District : Korba, Chhattisgarh] *(R 1 to 4 claimants)*
5. Ramesh Kumar Sao, S/o Karam Dev, aged about 40 years, R/o Navadih, P.S. Khajuri, Dist. Palamu, Jharkhand, District : Palamu, Jharkhand.
6. Jay Singh S/o Heera Singh R/o Quarter No. B/51, Urja Nagar, Secl Gewra Project, P.S. Kusmunda, Distt. Korba C.G., District : Korba, Chhattisgarh

---- Respondent***WITH*****MAC No. 1061 of 2012**

- Bajaj Allianz General Insurance Co. Ltd., Thru- Branch Office At Shiv Mohan Bhawan, Vidhan Sabha Road, P.S. Pandri, Raipur, Tah. And Distt. Raipur C.G., Chhattisgarh

---- Appellant.**Versus**

1. Mrs. Reeta Devi W/o Late Ganga Prasad Aged About 23 Years,
2. Avinash S/o Late Ganga Prasad Aged About 5 Years, Minor,
3. Ku. Sangeeta D/o Late Ganga Prasad Aged About 2 Years, Minor,
(Both minor through mother Mrs. Reeta Devi, W/o Late Shri Ganga Prasad)
4. Ram Sudeshwar S/o Laldhari ,aged about 55 years,
5. Mrs. Kanti Devi W/o Ram Sudeshwar Aged About 52 Years,
[All R/o Dharampura, Gewra Basti, P.S. Kusmunda, Distt. Korba C.G., District : Korba, Chhattisgarh] *(R 1 to 5 Claimants)*
6. Ramesh Kumar Sao S/o Karam Dev Aged About 40 Years Navadih, P.S. Khajuri, Distt. Palamu Jharkhand, District : Palamu, Jharkhand
7. Jay Singh S/o Heera Singh Qtr. No. B/51, Urja Nagar, Secl Gewra Project, P.S. Kusmunda, Distt. Korba C.G., District : Korba, Chhattisgarh

---- Respondent.***WITH***

MAC No. 540 of 2013

1. Smt. Sheela Devi W/o Late Raghu Chaitamba, aged about 36 years,
2. Kumari Savita Chaitamba D/o Late Raghu Chaitamba, aged about 19 Years,
3. Kumari Anita Chaitmba, D/o Late Raghu Chaitamba Aged About 17 Years,
4. Kumari Pinki Chaitamba D/o Late Raghu Chaitamba Aged About 15 Years,
5. Aashiq Chaitmba S/o Late Raghu Chaitamba Aged About 15 Years,
6. Kumari Reena Chaitamba D/o Late Raghu Chaitamba Aged About 6 Years,

(Respondents No.3 to 6 are minors through natural guardian mother Smt. Sheela Devi (Appellant No.1)

All R/o of Shanti Nagar, Kusmunda, Dist. Korba C.G., District : Korba, Chhattisgarh

---- Appellants/claimants.

Versus

1. Ramesh Kumar Sao, S/o Karamdev Aged About 28 Years Village Navdiha, Khajri, Thana Pitarpur, Dist. Palamu Jharkhand Pre. At S.M.S. Co. Gevra, Thana Dipka, Dist. Korba C.G., Chhattisgarh
2. Jai Singh S/o Heera Singh Aged About 60 Years R/o B-51, Urja Nagar, S.E.C.L. Gevra, Dist. Korba C.G., District : Korba, Chhattisgarh
3. Bajaj Allianz Gen. Insu. Co. Ltd., Pandri, Dist. Raipur C.G. Thro Aditya Gadge, Auth. Rep. Bajaj Allianz Gene. Insu. Co. Ltd. 1 St Floor, Arpa Complex, Shop No. 13 And 14, Opposite Nav Bharat Press, Near Bus Stand, Bilaspur C.G., District : Raipur, Chhattisgarh
(Insurance Comapany)

---- Respondent

WITH**MAC No. 541 of 2013**

1. Bhusaal Koshle S/o Bhauram Koshle, aged about 49 years, Caste Satnami,
2. Mayawati Koshle W/o Bhusaal Koshle Aged About 40 Years, Caste Satnami,
3. Laxmin Bai W/o Late Laxmi Koshle Aged About 28 Years, Caste Satnami,
4. Sushil Koshle S/o Late Laxmi Koshle Aged About 14 Years, Caste Satnami,
5. Seema Koshle D/o Late Laxmi Koshle Aged About 9 Years, Minor,
6. Pooja Koshle D/o Late Laxmi Koshle Aged About 6 Years, Minor,
7. Rani Koshle S/o Late Laxmi Koshle Aged About 4 Years, Minor,
8. Dadu Koshle S/o Late Laxmi Koshle Aged About 2 Years, Minor,

[(Respondent No.4 to 8 are minors through their natural guardian mother Laxmin Bai, widow of Late Laxmi Koshle, aged 28 years,

caste Satnami). All residents of Nawagarh, Post and Tah. Nawagarh, Distt. Janjgir - Champa (C.G.).

---- Appellants/claimants.

Versus

1. Ramesh Kumar Sao, S/o Karamdev Aged About 28 Years R/o Navdiha, Khajri, Thana- Pitarpur, Distt. Palamu Jharkhand, Presently at S.M.S. Company, Gevra, Thana- Dipka, Distt. Korba C.G., Chhattisgarh
2. Jai Singh S/o Heera Singh Aged About 60 Years R/o B-51, Urja Nagar, S.E.C.L. Gevra, Distt. Korba C.G., District : Korba, Chhattisgarh
3. Bajaj Allianz General Insu. Co. Ltd., Pandri, Distt. Raipur C.G., Thru- Aditya Gadge, Auth.Repre. Bajaj Allianz General Insu.Co.Ltd., 1st Floor, Arpa Complex, Shop No. 13 And 14, Opp. Nav Bharat Press, Near Bus Stand, Bilaspur C.G., District : Bilaspur, Chhattisgarh
(Insurance Company)

---- Respondents

Mr. Sachin Singh Rajpoot, Mr. N.K. Thakur, Adv., Alok Kumar Gupta, Adv., Mr. Rishabh Singh Deo on behalf of Mr. Goutam Khetrpal, Mr. R.P. Singh, Mr. Alok Kumar Gupta, counsel for their respective parties.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

As the aforesaid seven appeals arise out of the same accident involving the life of as many as six persons, they are disposed of by this common order.

2. Briefly stated facts of the case are that on 12.04.2006 at about 8 PM when two trucks bearing Registration No.CG12/C-9363 and CG12/C-9958 were parked by the side of the road at Adarsh Nagar, Kusmunda, the offending vehicle i.e. the truck bearing Registration No. CG12/C-1753 driven by one Ramesh Kumar Sao in a rash and negligent manner dashed the same from behind as a result of which as many as six persons namely Dhirendra, Laxmi Prasad, Ganga Singh, Basant Kumar, Raghu and Suresh Prasad suffered grievous injuries on their body and succumbed to the same, some on the spot and some after being taken to hospital.

3. The compensation claimed by the claimants and the one awarded by learned Claims Tribunal is being detailed in a tabular form as hereunder:-

Claim case number	Amount claimed	Amount awarded
Claim Case No.34/2012	Rs.15,00,000/-	Rs.5,45,800/-
Claim Case No.33/2012	Rs.10,00,000/-	Rs.4,16,000/-
Claim Case No.56/2007	Rs.40,90,000/-	Rs.3,58,500/-
Claim Case No.57/2007	Rs24,90,000/-	Rs.3,35,500/-
Claim Case No.202/2007	Rs.28,50,000/-	Rs.3,35,500/-

The aforesaid awards impugned have been assailed before this Court, both by the claimants for enhancement of the amount awarded and also by the Insurance Company for setting aside the impugned award.

4. It is the dependents of the five victims of the motor accident as referred to above who laid their claim before learned Claims Tribunal seeking compensation of various quantifications. The claim was duly contested by the Insurance Company *inter alia* on the ground that as the aforesaid two vehicles which were stationed by the side of the road and hit by the offending vehicle were also involved in the accident and therefore, their driver, owner and insurance company should also have been made party and in the absence thereof, the claim of the claimants is not maintainable.

5. The argument put-forth by the counsel for the claimants is that the amount awarded to the claimants is extremely on the lower side and while passing the same learned Claims Tribunal has not taken into consideration the evidence of the witnesses in its proper perspective. Referring to the age of the deceased persons and the number of dependents, it has been argued that the compensation awarded by

learned Claims Tribunal including on conventional heads, in all the aforementioned cases, be enhanced suitably. According to the counsel for the claimants, learned Tribunal has fallen in a serious error of law in not granting any amount towards the future prospects of the deceased persons which is against the mandate of Hon'ble the Apex Court in number of decisions.

6. On the other hand, raising number of grounds including the one that the vehicles described above against which the offending vehicle had dashed, were also involved in the accident and therefore, the driver, owner and the insurance company of those two vehicles should also have been made party in the absence of which the claim of the claimants is not maintainable. According to the counsel for the Insurance Company, since the driver, owner and insurance company of the aforesaid two stationary vehicles have not been arrayed as party to the case, the respondent/Insurance Company herein is not solely liable to compensate the claimants and therefore, the award impugned granting compensation is liable to be set aside.

7. Heard counsel for the parties and perused the material on record.

8. As regards the breach of policy on the part of the deceased persons on account of their occupying the offending vehicle in the capacity of gratuitous passengers, this Court went through the evidence of the investigating officer but no such fact emerged therefrom. The investigating officer has nowhere stated that any of the victims was occupying the offending vehicle as a gratuitous passenger at the time of mishap. If the evidence of the witnesses is seen carefully, number of contradictions appear to be present thereon in regard to material particulars. What is more important to mention here is that though a great emphasis has been laid on the evidence of the investigating officer yet this Court is of the

opinion that as the investigating officer did not see the accident in question with his own eyes, his testimony cannot be implicitly relied upon unless and until it receives corroboration from the other corners. Even the dead bodies and the injured persons were already shifted to the hospital before he reached the spot. The evidence of investigating officer rather goes to show that at the time of accident, the two trucks had been parked by the road side on account of some mechanical disorder and it is the driver of the offending vehicle who drove the said vehicle in a rash and negligent manner and rammed into the vehicles on the standby mode from back side. The impact of the accident was so intense that the six persons suffered number of grievous injuries and met with untimely death. He has further reiterated that after he reached the spot, one mechanic present there told him that the two trucks against which the offending vehicle had dashed, were parked by the road side on account of some mechanical disorder. Thus as no cogent evidence has been adduced on behalf of the Insurance Company that any of the deceased persons had occupied the ill fated vehicle in the capacity of gratuitous passenger, it cannot be said by any stretch of imagination that any of the conditions of the insurance policy was breached and therefore, the insurance company cannot escape from satisfying the impugned award passed by the learned Claims Tribunal. Being so, MAC No.1059/2012, 572/2013, 576/2013, 1060/2012, 1061/2012 filed by Insurance Company are without any substance and therefore, dismissed.

9. As regards the appeals preferred by the claimants for enhancement of the compensation, this Court is of the opinion that the assessment of compensation needs some modification in the light of the judicial pronouncements in the matter of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in (2017) 16 SCC 680 : 2017 (4) ACCD 2106 (SC), **Sarla Verma and others Vs. Delhi**

Transport Corporation and another, (2009) 6 SCC 121 : 2009 (2) ACCD 924 (SC) and in the matter of Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65 : 2013 (2) ACCD 977 (SC). Even the Tribunal has not granted any amount towards the future prospects of the deceased. Accordingly the award impugned is modified in the following manner:-

MAC No.541/2013 arising out of Claim Case No.34/2012

The amount awarded by the Tribunal is modified to the following extent:-

Notional income	-	Rs.36,000/- PA (Rs.3000 x 12)
Future prospects	-	Rs.14,400/- (40% of Rs.36,000/-)
Total income	-	Rs.50,400/- (Rs.36,000 + 14,400/-)
Deduction towards personal expenses	-	1/5 (Rs.10,080/-)
Dependency	-	Rs.40,320/- (Amount being spent on the dependency)
Multiplier	-	16
Compensation	-	40,320 x 16 = Rs.6,45,120/-
Loss of love and affection and consortium	-	Rs.40,000/-
funeral expenses	-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
<u>Total compensation</u>	-	<u>Rs.7,15,120/-</u>

MAC No.540/2013 arising out of Claim Case No.33/2012

The amount awarded by the Tribunal is modified to the following extent:-

Notional income	-	Rs.36,000/- PA (Rs.3000 x 12)
Future prospects	-	Rs.9000/- (25% of Rs.36,000/-)
Total income	-	Rs.45,000/- (Rs.36000+9000/-)
Deduction towards personal expenses	-	1/4 (Rs.11,250/-)
dependency	-	Rs.33,750/-
Multiplier	-	13
Compensation	-	Rs.33,750 x 13 = Rs.4,38,750/-

Loss of love and affection and consortium	-	Rs.40,000/-
funeral expenses	-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
<u>Total compensation</u>	-	<u>Rs.5,08,750/-</u>

10. In the light of the aforesaid factual discussion, the appeals filed by the Insurance Company fails and are dismissed as such whereas those of the claimants are allowed in part to the extent indicated above.

Sd/-
(Vimla Singh Kapoor)
Judge