

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**MAC No. 397 of 2015**

M/s. Dayal Road Lines, N/R. Bagga Machinery (Bagga Hotel), Bhanpuri, Raipur (C.G.) Through The Proprietor Manjit Kour, Aged About 58 Years, W/o Shri Surendra Panjabi, R/o House No.745, Guru Govind Nagar, Infront of Chhattisgarh Beverage Office, Raipur, District Raipur (C.G.)

---- Appellant**Versus**

1. Smt. Laxmin Bai Bhardwaj, W/o Shri Ganesh Ram Bhardwaj, Aged About 30 Years,
2. Heera Lal Bhardwaj, S/o Shri Ganesh Ram Bhardwaj, Aged About 35 Years,
Both R/o Village Gatouri, Near Mandi, P.S. Koni, Tahsil and District Bilaspur (C.G.).
3. Murli @ Murlidhar Soni, S/o Late Shri Kanchar Lal Soni, Aged About 40 Years, R/o Power House, Torwa, P.S. Torwa, Tahsil and District Bilaspur (C.G.).
4. Shiv Kumar Prajapati, S/o Late Shri Dhaniram Prajapati, Aged About 56 Years, R/o Bannakdih, P.S. Chakarbhata, District Bilaspur (C.G.).

---- Respondents**MAC No. 1585 of 2015**

1. Smt. Laxmin Bai Bhardwaj, W/o Heeralal Bhardwaj, Aged About 30 Years,
2. Heeralal Bharadwaj, S/o Ganeshram Bhardwaj, Aged About 35 Years,
All R/o Near Dhan Mandi of Village Gatouri, P.S. Koni, Tahsil and District Bilaspur (C.G.).

---- Appellants**Versus**

1. Murli @ Murlidhar Soni, S/o Shri Kanchar Lal Soni, Aged About 40 Years, R/o Power House, Torba, P.S. Torba, Tahsil and District Bilaspur (C.G.).
2. Shiv Kumar Prajapati, S/o Late Dhaniram Prajapati, Aged About 56 Years, R/o Village Bannakadih, P.S. Chakarbhatha, District Bilaspur (C.G.).
3. M/s Dayal Road Lines, N/R. Bagga Machinery (Bagga Hotel), Bhanpuri, Raipur (C.G.) Through, The Proprietor Manjit Kour, W/o Shri Surendra Panjabi, Aged About 58 Years, R/o House No.745, Guru Govind Nagar, Infront of Chhattisgarh Beverage Office, Raipur, District Raipur (C.G.)

---- Respondents

MAC No.397 of 2015

For Appellant : Shri Raghvendra Pradhan and Shri Shikhar Sharma, Advocates

For Respondents No.1 & 2 : Shri Rajesh Jain, Advocate

For Respondents No.3 & 4 : None

MAC No.1585 of 2015

For Appellants : Shri Rajesh Jain, Advocate

For Respondents No.1 & 2 : None

For Respondent No.3 : Shri Raghvendra Pradhan and Shri Shikhar Sharma, Advocates

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

29.01.2021

1. As both the appeals are arising out of award dated 23.01.2015 passed by Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.29 of 2012, hence, they are being disposed of by this common judgment.
2. MAC No.397 of 2015 is filed by earlier registered owner of offending vehicle challenging the liability fastened upon her to satisfy the amount of compensation, whereas MAC No.1585 of 2015 is filed by the claimants seeking enhancement of amount of compensation awarded by learned Claims Tribunal.
3. Facts relevant for disposal of these appeals, are that, on 08.05.2011, Sanjay Bhardwaj was going along with his mother to pond. While so, when they reached near Middle School, Dhan

Mandi, one Truck bearing No.CG-04/ZC/2484 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1, dashed Sanjay Bhardwaj and caused accident. In the aforementioned accident, Sanjay Bhardwaj suffered grievous injuries, he was taken to CIMS Hospital, Bilaspur where during the course of treatment, he died.

4. Claimants who are parents of deceased Sanjay Bhardwaj, aged about 7 years filed an application under Section 166 of the M.V. Act before learned Claims Tribunal seeking compensation of Rs.6,55,000/- pleading therein that on the date of accident, Sanjay Bhardwaj was a brilliant student and having bright future.
5. Non-applicants No.1 and 2, after service of notice appeared through Advocate and thereafter, became *ex parte*.
6. Non-applicant No.3 submitted reply to claim application, while denying the pleadings made therein, pleaded that on the date of accident, non-applicant No.3 was not a registered owner of offending vehicle as in the year 2003, non-applicant No.3 sold offending vehicle to non-applicant No.2. All relevant documents for getting the name of non-applicant No.2 transfer in record of Transport Department were also handed over to him on the date of sale of offending vehicle. It was further pleaded that since 2003, non-applicant No.3 was not having any relationship with offending vehicle, as such, name of non-applicant No.3 to be deleted and application against non-applicant No.3 be dismissed.

7. Upon appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that deceased Sanjay Bhardwaj died on account of motor accidental injuries suffered by him due to rash and negligent driving of offending vehicle by non-applicant No.1; on the date of accident, non-applicant No.3 was a registered owner of offending vehicle and awarded Rs.80,000/- as total compensation on different heads.
8. Shri Raghvendra Pradhan, learned counsel for the appellant in MAC No.397 of 2015 and respondent No.3 in MAC No.1585 of 2015 submits that learned Claims Tribunal has erred in arriving at a finding that appellant was registered owner of offending vehicle on the date of accident. The said finding arrived at by learned Claims Tribunal is perverse to the documents and oral evidence brought on record. Appellant was initially owner of offending vehicle, which was sold to non-applicant No.2 on 06.02.2003 and on the said date, one sale agreement was executed to this effect. Appellant has signed the relevant papers for transferring the name of subsequent purchaser and handed over to non-applicant No.2/purchaser for its submission before concerned Transport Department. The purchaser was a resident of Bilaspur district, hence, 'No Objection Certificate' was obtained from Regional Transport Office, Raipur on 13.10.2014 thereafter, offending vehicle was registered in name of non-applicant No.2 on 05.05.2005, whereas accident took place on 08.05.2011 i.e. much

after the date of transfer of offending vehicle in the name of non-applicant No.2 in the Government record. It is pointed out that appellant after service of notice had submitted reply to claim application specifically pleading the aforementioned facts and also entered into witness box to prove the pleadings and documents (Ex.D/1 to D/3), but learned Claims Tribunal erroneously arrived at a finding that on the date of accident, appellant was registered owner of offending vehicle.

9. Per contra, Shri Rajesh Jain, learned counsel for respondents No.1 and 2/claimants in MAC No.397 of 2015 and appellants in MAC No.1585 of 2015 submits that as per law settled by Hon'ble Supreme Court, non-applicant No.3 being registered owner is liable to be satisfied the amount of compensation. He further submits that claimants have filed separate appeal being MAC No.1585 of 2015 seeking enhancement of amount of compensation. It is contended that learned Claims Tribunal has awarded only Rs.80,000/- as compensation instead of Rs.5,00,000/-. It is further contended that learned Claims Tribunal has not calculated the amount of compensation by applying multiplier system and taking into consideration the age of deceased who was son of claimants. Amount of compensation awarded by learned Claims Tribunal is much on lower side.
10. No one appeared on behalf of respondents No.3 and 4 in MAC No.397 of 2015 and respondents No.1 and 2 in MAC No.1585 of 2015, though served.

11. We have heard learned counsel for the respective parties and perused the record carefully.
12. So far as the argument raised by Shri Pradhan, learned counsel for the appellant in MAC No.397 of 2015, perusal of the record of claim case would show that learned Claims Tribunal issued notice of claim application to non-applicants therein. Non-applicant No.2 was served, appeared before learned Claims Tribunal on 02.11.2012 through Shri Rajesh Dubey, Advocate and also signed *Vakalatnama*. After attending hearing before learned Claims Tribunal on couple of dates, non-applicant No.2 became *ex parte* without filing reply to claim application. Appellant/non-applicant No.3 submitted reply to claim application with a very specific pleading that appellant sold the offending vehicle to non-applicant No.2, he has signed the relevant documents for transferring the name of non-applicant No.2 in Government record and name of non-applicant No.2 is recorded in the documents issued by Regional Transport Office, Bilaspur. Appellant/non-applicant No.3 has filed notarized agreement of sale of offending vehicle as Ex.D/2, which was written in a stamp-paper. The sale agreement was executed on 06.02.2003, which was signed by both the parties. Appellant has placed on record the information given by Registering Authority, Bilaspur with regard to offending vehicle vide Ex.D/3 and in the said document, non-applicant No.2 has been shown to be registered owner of offending vehicle. In the said document, it is mentioned as 'T.O. on 05.05.2005'.

Appellant/non-applicant No.3-Manjit Kaur (NAW(3)-1) entered into witness box to prove aforementioned documents, who in her evidence very specifically stated that on 05.05.2005, offending vehicle got transferred/registered in the name of non-applicant No.2.

13. Learned Claims Tribunal taking into consideration only one aspect that particulars of registration of offending vehicle (Ex.D/3) was obtained on 05.09.2012 after service of notice, document (Ex.D/2) is an agreement and not a sale letter and non-applicant No.3 failed to prove that any sale letter was executed, has not considered the date of transfer mentioned in Ex.D/3 i.e. particulars issued by Government Department showing it to be transferred on 05.05.2005. In absence of any rebuttal evidence to Ex.D/3, which was obtained under Right to Information Act could not be overlooked.
14. The observation made by learned Claims Tribunal that document (Ex.D/2) is only an agreement and not a sale letter is correct, but as per submission made by learned counsel for the appellant that as per practice, agreement is to be executed for selling of vehicle and both the parties have signed on a sale letter in a printed form, which is submitted in the Regional Transport Department for getting the name of purchaser to be recorded in Government record. The submission made by learned counsel for the appellant cannot be disbelieved particularly, when name of non-applicant No.2 has already been recorded in the record of Transport

Department to be a 'registered owner of offending vehicle'. The facts and evidence brought on record remains undisputed and uncontroverted. The aforementioned facts and evidence could have been only rebutted by non-applicant No.2/purchaser of offending vehicle and could have refuted the documents issued by Regional Transport Office, Bilaspur, which is Government Department, but after making his appearance before learned Claims Tribunal, he remained absent and was proceeded *ex parte*.

15. In view of the aforementioned facts and circumstances of the case, evidence available on record, particularly, Ex.D/3 particulars of registration of offending vehicle issued by Registering Authority, Bilaspur, we are of the considered view that learned Claims Tribunal erred in disbelieving the evidence/document brought on record by appellant/non-applicant No.3 showing non-applicant No.2 to be registered owner on the date of accident. The said finding of learned Claims Tribunal with regard to issue No.3 is not sustainable being perverse to evidence available on record, hence, it is set aside.
16. In view of particulars of registration of offending vehicle issued by the Registering Authority, Bilaspur vide Ex.D/3, we hold that non-applicant No.2 to be registered owner of offending vehicle on the date of accident, as such, liability to satisfy the amount of compensation shall be upon non-applicant No.2. Appellant/non-applicant No.3 is exonerated from liability to satisfy the amount of

compensation and she will be entitled to recover the amount so deposited from non-applicant No.2 in accordance with law.

17. So far as the appeal filed by claimants being MAC No.1585 of 2015 seeking enhancement of amount of compensation is concerned, claimants in their claim application pleaded the age of deceased child to be 7 years and was a student of 3rd standard. The child of such tender age cannot have any earning so as to calculate the amount of compensation by applying multiplier system. Life of child cannot be estimated in terms of money, but then some reasonable amount of compensation is to be awarded to unfortunate parents who have lost their son aged about 7 years. Learned Claims Tribunal has awarded Rs.50,000/- towards loss of estate, Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards mental agony and Rs.10,000/- funeral expenses, which in the opinion of this Court is on lower side and requires enhancement.

18. The amount of compensation to be awarded in case of unfortunate death of minor child has been considered by Hon'ble Supreme Court in case of **Puttamma and others v. K.L. Narayana Reddy and Another** reported in **(2013) 15 SCC 45** and held thus :

“58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific directions to the Central Government through the Secretary,

Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs.1,00,000/- (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs.1,50,000 (Rupees one lakh and fifty thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act.”

19. Taking into consideration entire facts and circumstances of the case and ruling rendered by Hon'ble Supreme Court in **Puttamma** (supra), we find it appropriate to award Rs.1,50,000/- as fixed compensation towards death of minor child, aged about 7 years. In addition to above amount of compensation against death of minor child, claimants will further be entitled for Rs.40,000/- towards loss of filial consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses as held by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**.

20. Now, the claimants are entitled for total compensation of

Rs.2,20,000/- (1,50,000 + 40,000 + 15,000 + 15,000) instead of Rs.80,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

21. In MAC No.397 of 2015, this Court vide order dated 06.10.2015 has passed an interim order in favour of the appellant herein. If the amount deposited is not disbursed to the claimants, then the Tribunal is directed to refund the amount to appellant/non-applicant No.3. If any amount so deposited is disbursed then, the appellant will be at liberty to recover the said amount from non-applicant No.2 (purchaser).
22. In the result, MAC No.397 of 2015 filed by appellant/non-applicant No.3 is allowed and liability to satisfy the amount of compensation is fastened upon non-applicant No.2. MAC No.1585 of 2015 filed by appellants/claimants is allowed in part. Impugned award is modified to the extent as indicated herein-above.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge