

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 179 of 2015**

Purushottam Thakur S/o Shri Patiram Thakur, Caste Gond, aged about 39 years, Resident of Village Bhainsbod, Police Station Ranchirai, Tahsil Patan, District Durg, Chhattisgarh.

---- Appellant**Versus**

1. Anil Kumar Gupta, S/o Brijlal Gupta, R/o Railway Colony, Supela, Bhilai, Tehsil and District Durg, Chhattisgarh.
2. Rajesh Kumar Sahu, S/o Late Tejram Sahu, R/o Behind Buddha Temple, Panchsheel Nagar, BMY Charoda, Tehsil and District Durg, Chhattisgarh.
3. Branch Manager, Choramandalam General Insurance Company Limited, First Floor, Hinduja Complex, 22 Paras Nagar Chowk, Near Railway Line, Devendra Nagar, Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Shri Goutam Khetrapal, Advocate with Shri Roshan Patnaik, Advocate
For Respondents	: None

(Proceedings through Video Conferencing)**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****13.08.2021**

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 30.08.2014 passed by the Fourth Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.131 of 2013 whereby learned Claims Tribunal allowed an application filed under Section 166 read with Section 140 of the M.V. Act in part and awarded Rs.50,000/- as total compensation along with interest at the rate of 6% per annum from the date of filing of claim application till its realization in a fatal accident case.

2. Brief facts relevant for disposal of this appeal, are that, on 26.01.2012, Santosh Thakur was walking on the left side of the road and going to Power House, while so, one Mini Bus bearing No. CG-07/E/0893 (hereinafter referred to as 'offending vehicle') driven by non-applicant No.1 rashly and negligently, dashed Santosh Thakur and caused accident. In the said accident, Santosh Thakur suffered grievous injuries on his head and other parts of body. He was taken to Government Hospital, Durg where he succumbed to the injuries during course of treatment.
3. Appellant/claimant, who is elder brother of Late Santosh Thakur, aged about 39 years filed an application under Section 166 read with Section 140 of M.V. Act seeking compensation of Rs.14,02,000/- pleading therein that on the date of accident, deceased was able-bodied person, aged about 37 years and earning Rs.300/- per day from his work of Mason.
4. Non-applicant No.1 did not appear before learned Claims Tribunal and was proceeded *ex-parte*.
5. Non-applicant No.2/owner of offending vehicle submitted reply resisting the claim. It was pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3, as such, liability, if any, to satisfy the compensation would be upon non-applicant No.3/Insurance Company.
6. Non-applicant No.3/Insurance Company submitted reply resisting the claim, further pleaded that claimant has not filed

any document to prove that he is legal representative of deceased; claimant is elder brother of deceased, hence, he cannot be treated as dependent on the income of deceased; there was no valid and effective driving licence with driver of offending vehicle and there was no valid permit and fitness certificate, hence, there was breach of policy conditions.

7. On appreciation of pleadings, evidence placed on record by the respective parties, learned Claims Tribunal held that Santosh Thakur died on account of motor accidental injuries on account of rash and negligent driving of offending vehicle by non-applicant No.1, contributory negligence, breach of policy conditions and claimant to be dependent were not found to be proved and awarded Rs.50,000/- as compensation towards loss of estate.
8. Shri Goutam Khetrapal, learned counsel for the appellant/claimant would submit that claimant in claim application has very specifically pleaded that deceased was handing over his income to him, he was taking care of his children and expending money for their education, clothing etc. which was also stated in his evidence, but learned Claims Tribunal erroneously arrived at a finding that appellant was not dependent upon the income of deceased. He further submits that Section 166(c) of the M.V. Act provides for filing of an application for compensation arising out of an accident by all or any of the legal representative of deceased. Appellant being brother of deceased is legal representative, therefore, he is

having right to file an application under Section 166 of the M.V. Act and sought compensation against the death of brother of appellant. He pointed out that learned Claims Tribunal ought to have computed the amount of compensation by applying multiplier system and should have awarded just amount of compensation in the facts of the case. He places his reliance on the ruling of High Court of Rajasthan in case of **Kishan Lal and Others v. Bharosi Lal and Others** reported in **(2002) ACJ 1750** in support of his submission.

9. No one appeared on behalf of the respondents, though served.
10. I have heard learned counsel appearing for the appellant/claimant and perused the record carefully.
11. Perusal of claim application would show that claimant has pleaded the deceased to be his younger brother, claimant himself to be a married person, aged about 39 years. Deceased was unmarried and he used to give entire income of his to the claimant. Claimant- Purushottam Thakur examined himself as AW-1 and admitted in his cross-examination that his occupation is of agriculturist, 6 acres of land is recorded in his name. From agricultural land, he receive income of Rs.50,000/- (from lease). He is working as Labourer, his wife also used to go for Labour work along with him and earn Rs.152/- per day each. Claimant is maintaining his family along with his wife. He further admitted that his brother (deceased) was residing at Mandhar and comes to his house during

Festivals. From the aforementioned evidence of claimant, it is evident that claimant is residing along with his family separately. He was earning from agricultural field by giving lease and also as Labourer along with his wife. Claimant and his wife were maintaining their family, deceased was residing separately and occasionally visits to the house of claimant.

12. In view of specific evidence available on record, contention of learned counsel for the appellant/claimant that deceased used to give his entire income to claimant and maintaining the family of claimant cannot be accepted to be correct and it is hereby repelled. As the deceased was residing separately and claimant was maintaining his family from the income of his own and his wife, therefore, learned Claims Tribunal rightly concluded that appellant/claimant was not dependent on the income of deceased.
13. The issue with regard to award of compensation to legal representative where legal representative was daughter of deceased residing separately has been considered by Hon'ble Supreme Court in case of **Manjuri Bera (Smt.) v. Oriental Insurance Company Ltd. and another** reported in **(2007) 10 SCC 643**. In the aforementioned case, claimant was married daughter and claiming compensation on the death of her father. Hon'ble Supreme Court in that case held that right to file application for compensation and entitlement of compensation are two different aspects. Hon'ble Supreme Court further considered that appellant therein was not dependent, hence,

she will not be entitled for compensation towards loss of dependency, but only towards 'no fault liability' as envisaged under Section 140 of the M.V. Act as legal representative will inherit the estate of deceased and held thus :

“19. In the impugned judgment the High Court has correctly drawn a distinction between "right to apply for compensation" and "entitlement to compensation". The High Court has rightly held that even a married daughter is a legal representative and she is certainly entitled to claim compensation. It was further held, on the facts of the present case, that the married daughter was not dependent on her father. She was living with her husband in her husband's house. Therefore, she was not entitled to claim statutory compensation. According to the High Court, the claimant was not dependent on her father's income. Hence, she was not entitled to claim compensation based on "No-fault liability".

20. In my opinion, "No-fault liability", envisaged in Section 140 of the said Act, is distinguishable from the rule of "strict liability". In the former, the compensation amount is fixed. It is Rs. 50,000/- in cases of death [Section 140(2)]. It is a statutory liability. It is an amount which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed amount/crystallized amount, the same has to be considered as part of the estate of the deceased. In the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under "No fault Liability" in terms of Section 140 of the said Act. My opinion is confined only to the "No-fault liability" under Section 140 of the said Act. That section is a Code by itself within the Motor Vehicles Act, 1988.”

14. The facts of the case at hand is squarely covered by the aforementioned ruling of Hon'ble Supreme Court. In the case at hand also, appellant was a married person, having its separate family, residing separately and maintaining his family from income of his own and his wife, deceased was residing separately at different place, therefore, appellant/claimant is entitled for compensation of Rs.50,000/- as estate of deceased. Learned Claims Tribunal has awarded Rs.50,000/-, which in the opinion of this Court, cannot be said to be erroneous.
15. For the foregoing reasons, I do not find any good ground to interfere with the impugned award. Appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh