



2026:CGHC:21227



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 154 of 2024

1 - Smt. Kumari Bai Markande W/o Dihul Markande Aged About 49 Years R/o Village Jevri, P.S. Bemetara, District - Bemetara, Chhattisgarh. (Claimants)

2 - Ranjeet Markande S/o Dihul Markande Aged About 34 Years R/o Village Jevri, P.S. Bemetara, District - Bemetara, Chhattisgarh.

...Appellant(s)

versus

1 - Ajay Kumar Sahu S/o Tiharu Ram Sahu Aged About 24 Years R/o Vilalge Bhansuli, P.S. - Ghandnu, Tah. And District - Bemetara, Chhattisgarh. (Tata Vehicle 1109 No. C.G. 04-Lc. 1706 Driver)

2 - Tikaram Sahu S/o Banshilal Sahu Aged About 44 Years R/o Vilalge Bhansuli, P.S. - Ghandnu, Tah. And District - Bemetara, Chhattisgarh. (Tata Vehicle 1109 No. C.G. 04-Lc. 1706 Owner)

3 - Magima H.D.I. General Insurance Company Limited, Registered Office - Development House Park Street Kolkata 700016. Permanent Office - Maigma H.D.I. General Insurance Company Limited Address 501, 506-512, 5th Floor D.B. City, Corporate Park Plot No. 1, Block -9, Rajbandha Maidan, Raipur, District - Raipur, Chhattisgarh. By - Claim Manager Policy No. P002300004/4103/106352 Term Period Dated. 02-12-2022 To 01-12-2023. (Tata Vehicle 1109 No. C.G. 04-Lc. 1706 Insurance Company)

... Respondent(s)

For Appellants	: Mr. Tarun Danseana, Advocate
For Respondent Nos. 1 & 2	: None
For Respondent Nos. 3	: Mr. Ashutosh Rathore, Advocate

Hon'ble Shri Justice Sachin Singh Rajput,

Order on Board

06.05.2026



- 1) This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, "MV Act") has been preferred by the appellants/claimants, being aggrieved by the award dated 07.10.2023 passed by 1st Additional Motor Accident Claims Tribunal, Bemetara District Bemetara (C.G.) (for short, "the learned Tribunal") in Claim Case No. 79/2023.
- 2) By the impugned award, the learned Tribunal has awarded compensation of Rs. 4,94,116/- to the appellants/claimants on account of the death of deceased Dihul Markande in a motor accident that occurred on 21.02.2023 due to rash and negligent driving of the offending vehicle (Tata 1109 four wheeler) bearing Registration No. CG-04-LC-1706, driven by respondent No. 1, owned by the respondent No.2 and insured with respondent No. 3. As a result of the said accident, the deceased sustained fatal injuries and succumbed to the same.
- 3) Brief facts of the case are that on 21.02.2023, the deceased, Dihul Markande, was travelling as a pillion rider on Activa bearing registration No. CG/25/L/2850, driven by Santosh Donde of his village, for the purpose of withdrawing money from the District Cooperative Bank situated at village Jevra. At about 12:40 PM, while they were returning from village Jevra to Bemetara and had reached near village Gunarbod, the driver of vehicle Tata 1109 bearing registration No. CG/04/LC/1706, while driving the said vehicle rashly and negligently at a high speed, came from the opposite direction in a slanting manner and dashed against the Activa, thereby causing the accident. As a result of the said accident, both the driver of the Activa, namely Santosh Donde, and the deceased Dihul Markande, who was seated behind him, sustained grievous injuries. They were immediately taken to the District Hospital, Bemetara, and upon being referred by the doctors for better treatment, they were shifted to Medlife Hospital, Raipur, where, during the course of treatment, Dihul Markande succumbed to his injuries on 22.02.2023. It is further stated that on the report lodged by the informant, Mahesh Kumar Markande, on 21.02.2023 regarding the said motor accident, Crime No. 95/2023 was registered at Police Station Bemetara against the driver of the



offending vehicle, namely Tata 1109 bearing registration No. CG/04/LC/1706. Upon completion of the investigation, charge-sheet No. 164/2023 was prepared and filed before the Court of the Chief Judicial Magistrate, Bemetara, District Bemetara, against respondent No. 1 Ajay Kumar Sahu, for offences punishable under Sections 279, 337, 338 and 304-A of the Indian Penal Code.

- 4) As per further pleadings, the deceased Dihul Markande was aged about 55 years and was working as a Tiles Mistri and Agriculture work, earning Rs. 80,000/- per month. The appellants/claimants were wholly dependent upon his income, Therefore, the claimants have filed the application seeking compensation of Rs. 87,09,276/- on account of the death of the deceased.
- 5) This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, "the MV Act") has been preferred by the appellants/claimants, being aggrieved by the award dated 07.10.2023 passed by the learned 1st Additional Motor Accident Claims Tribunal, Bemetara, District Bemetara (C.G.) (for short, "the learned Tribunal") in Claim Case No. 79/2023.
- 6) Respondent Nos. 1 and 2, namely the driver and owner of the offending vehicle, jointly filed their written statement denying the averments made in the claim petition. It was further pleaded that the offending vehicle was duly insured with the Insurance Company and, therefore, the liability to pay compensation, if any, would be upon the Insurance Company.
- 7) Respondent No. 3/Insurance Company also denied the averments made in the claim petition and took a plea of breach of policy conditions. It was further pleaded that the driver of the offending vehicle was not possessing a valid and effective driving licence and, therefore, there was violation of the terms and conditions of the insurance policy. Accordingly, respondent No. 3 prayed for exoneration from liability to pay compensation.



- 8) On the basis of the aforesaid pleadings, the learned Tribunal framed five issues and, upon appreciation of the evidence available on record, decided the issues substantially in favour of the appellants/claimants; however, the learned Tribunal held that there was contributory negligence to the extent of 50%.
- 9) Learned counsel for the appellants/claimants submits that the deceased, aged about 55 years, was a skilled Tiles Mistri and an agricultural worker earning Rs. 80,000/- per month. However, the learned Tribunal assessed the annual income of the deceased at Rs. 1,19,520/- and after deducting one-third towards personal expenses and applying the multiplier of 11, assessed the loss of dependency at Rs. 8,76,480/-. After adding Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenses and Rs. 40,000/- towards loss of consortium, the learned Tribunal assessed the total compensation at Rs. 9,46,480/-. However, after deducting 50% towards contributory negligence, compensation of Rs. 4,73,240/- was awarded and further an amount of Rs. 20,876/- was awarded towards medical expenses, thereby awarding a total compensation of Rs. 4,94,116/-, which, according to the learned counsel, warrants suitable enhancement. It is further submitted that there are two dependents in the family and it would be extremely difficult for them to sustain themselves on the meagre income assessed by the learned Tribunal. Hence, enhancement of compensation has been prayed for. Learned counsel further submits that the finding regarding contributory negligence is wholly erroneous, as the deceased was not driving either of the vehicles involved in the accident.
- 10) Per contra, learned counsel appearing for respondent No. 3/Insurance Company supported the impugned award and submitted that the findings recorded by the learned Tribunal with regard to contributory negligence, assessment of income and quantification of compensation are based upon proper appreciation of the evidence available on record. It is further submitted that the compensation awarded is fair, just and reasonable and does not call for any interference by this Court.



- 11) I have heard learned counsel for the parties, considered their rival submissions and perused the material available on record.
- 12) The primary question that arises for consideration before this Court is as to whether the learned Tribunal was justified in deducting 50% of the compensation amount towards contributory negligence.
- 13) It is not in dispute that the Aactiva scooter was not being driven by the deceased. Rather, the same was being driven by Santosh Dondre and the deceased was merely a pillion rider. No evidence whatsoever appears to have been adduced by the driver, owner or the Insurance Company to establish contributory negligence on the part of the deceased. Therefore, the finding recorded by the learned Claims Tribunal appears to be based on an erroneous factual and evidentiary foundation.
- 14) Apart from this, the learned Tribunal failed to take into consideration the law laid down by the Hon'ble Supreme Court in ***T.O. Anthony v. Karvarnan and others***, (2008) 3 SCC 748 wherein the Hon'ble Supreme Court has distinguished between contributory negligence and composite negligence and held as under:-

“Composite negligence refers to the negligence on the part of two or more persons, where a person is injured as a result of the negligence on the part of all or some of them. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them.

On the other hand, where a person suffers injury partly due to his own negligence and partly due to the negligence of another person, the negligence on the part of the injured which contributed to the accident is referred to as contributory negligence. Where the injured is guilty of contributory negligence, his claim for damages stands reduced to the extent of his own negligence.”

- 15) In the present case, the deceased was admittedly a pillion rider and was neither driving the vehicle nor was there any evidence brought on record to establish any negligence on his part contributing to the



accident. Therefore, the finding recorded by the learned Tribunal attributing 50% contributory negligence to the deceased is wholly unsustainable in law and contrary to the evidence available on record. Consequently, the said finding deserves to be and is hereby set aside.

- 16) This now leads to the second question relating to determination of just compensation. Though the claimants have asserted that the monthly income of the deceased was Rs. 80,000/-, this Court is not inclined to accept the said assertion in its entirety. The deceased was aged about 55 years and was stated to be working as a skilled Tiles Mistri at Bemetara, Chhattisgarh. By virtue of his age and long experience, it can reasonably be presumed that the deceased had acquired considerable expertise in his vocation as a Tiles Mistri.
- 17) Taking into consideration the evidence available on record, the nature of work performed by the deceased, the number of dependents, the age of the deceased, the date of accident and the prevailing minimum wages at the relevant point of time, this Court is of the considered view that the income assessed by the learned Claims Tribunal is on the lower side. In the facts and circumstances of the case, and also considering the prevailing inflationary trends, the monthly income of the deceased is reasonably assessed at Rs. 12,000/-, which, in the opinion of this Court, would constitute a just and reasonable income for sustaining the family of the dependents.
- 18) In light of the above and taking guidance from the judgment of Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. V. Pranay Sethi and others; (2017) 16 SCC 680, Sarla Verma & Ors. Vs. Delhi Transport Corporation & Ors; (2009) 6 SCC 121 and Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors; (2018) 18 SCC 130**, this Court is recomputing the compensation as below:-

S.N	Particular	Awarded by this Court
1.	Monthly Income of the deceased	12,000/-
2.	Future Prospects @	1200/-



	10%	
3.	Total Income	13,200/-
4.	Total Yearly Income	13,200 X12= 1,58,400/-
5.	Personal expenditure (1/3)	1,58,400/3= 52,800/-
6.	Net Income	1,58,400-52,800= 1,05,600/-
7.	Multiplier of 11 applied to assess total loss of dependency	1,05,600 X11= 11,61,600/-
8.	Funeral Expenses	16,500/-
9.	Loss of estate	16,500/-
10.	Spousal Consortium to appellant No. 1	44,000/-
11	Parental Consortium to appellants No. 2	40,000
	Total compensation	12,78,600/-

11) For the forgoing reasons, the appeal is allowed in part. The amount of compensation of Rs. 4,94,116/- awarded by the Tribunal is enhanced to Rs.12,78,600/-. Hence, after deducting the amount of Rs. 4,94,116/-, the appellants/claimants are held entitled for an additional amount of Rs. 7,84,484/-. The additional amount shall carry interest @6% per annum from the date of appeal i.e. 22.01.2024. The impugned award stands modified to the above extent.

12) The respondent No. 3—Insurance Company is directed to deposit the amount of compensation as enhanced by this Court within a period of sixty (60) days from today. Upon such deposit being made, A sum of Rs. 6,00,000/- shall be invested in the name of appellant No.1 in FDR in any Nationalized Bank for a period of two years. Rs. 50,000/- shall be disbursed to the appellant No. 2. The balance amount shall be released to appellant No. 1 by way of bank transfer/account payee cheque.

13) Consequently, the appeal is **partly allowed**.

Sd/-

(Sachin Singh Rajput)
Judge