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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 108 of 2024

1 - Suman Sahu S/o Bhulauram Sahu Aged About 55 Years R/o Kusmi, Tahsil And Police Station Berla, District Bemetara (C.G.).

2 - Umabai Sahu W/o Suman Sahu Aged About 50 Years R/o Kusmi, Tahsil And Police Station Berla, District Bemetara (C.G.).

3 - Jeevati Bai Wd/o Late Sanat Kumar Sahu Aged About 27 Years R/o Kusmi, Tahsil And Police Station Berla, District Bemetara (C.G.).

4 - Digendra Kumar S/o Late Sanat Kumar Sahu Aged About 3 Years Minor Through Their Natural Guardian I.E. Mother Namely Jeevati Bai Wd/o Late Sanat Kumar Sahu, Aged About 27 Years, R/o Kusmi, Tahsil And Police Station Berla, District Bemetara (C.G.).

5 - Khilendra Kumar S/o Late Sanat Kumar Sahu, Aged About 3 Months, Minor Through Thier Natural Guardian I.E. Mother Namely Jeevati Bai Wd/o Late Sanat Kumar Sahu, Aged About 27 Years, R/o Kusmi, Tahsil And Police Station Berla, District Bemetara (C.G.).

6 - Devenda Sahu S/o Suman Sahu Aged About 27 Years R/o Village Kusmi, Tahsil And Police Station Berla, District Bemetara (C.G.).

... Appellants

versus

1 - Indrabhan Singh Rajput S/o Jawahar Singh Rajput Aged About 25 Years R/o Village Ward No. 33, Jagruti Nagar, Rajput Hotel, Birgaon, Police Station Urla, Raipur, District Raipur (C.G.) 493221.

2 - Jawahar Singh Rajput S/o Shri Kanshi Singh Rajput Aged About 57 Years R/o Village Ward No. 33, Jagruti Nagar, Rajput Hotel, Birgaon, Police Station Urla, Raipur, District Raipur (C.G.) 493221 (Registered Owner Of The Offending Vehicle Motor Cycle No. CG 04 Mr 3525 On 12-02-2023).

3 - ICICI Lombard General Insurance Company Ltd. Through Manager, Address Ground Floor, Commercial Building Devendra Nagar Road, Raipur, District Raipur (C.G.) Pin 492009 Insurance From 04-05-2019 To 03-05-2024 (Registered Insurer Of The Offending Vehicle Motor Cycle No. CG 04 Mr 3525).

... Respondents

{Cause title, as taken from Case Information System}

For Appellants	:	Mr. Vaibhav A. Goverdhan, Advocate.
For Respondents No. 1 & 2	:	None present, though served.
For Respondent No. 3	:	Mr. Palash Agrawal, Adv. on behalf of Mr. Shekhar Rao Saheb Amin, Advocate.

{Hon'ble Mr. Justice Sachin Singh Rajput}

Order on Board

20/03/2026

1. The appellants-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity, "MV Act, 1988") calling in question the validity, correctness and judicial propriety of the impugned award dated 6th October, 2023 passed by First Additional Motor Accident Claims Tribunal, Bemetara, District Bemetara (C.G.) (for short, 'Claims Tribunal') in Motor Accident Claim Case No. 74/2023.
2. By the impugned award, while partly allowing the application under Section 166 of the MV Act, 1988 against a claim of Rs. 79,12,000/-, learned Claims Tribunal has awarded compensation to the tune of Rs.6,32,600/- in favour of the appellants /claimants on account of death of deceased – Sanad Kumar Sahu in a motor accident that occurred on 12.02.2023 due to rash & negligent driving of the offending vehicle - motorcycle bearing registration No. CG-04/M.R./3525 , driven by respondent No. 1, owned by respondent No. 2 and insured with the respondent No. 3 – Insurance Company.

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3. As per pleading made in the claim application, on 12.02.2023, deceased – Sanat Kumar Sahu had gone to his in-law's village Matara on his Motorcycle bearing registration No. CG/12/E/0556 and while returning from there at about 11 AM, he reached village Kusmi main road in front of the village's paddy market gate , at that time, the offending vehicle- motorcycle bearing registration No. CG-04/M.R./3525 driven by respondent No. 1 rashly & negligently from opposite side, dashed to the motor cycle of the deceased, as a result thereof, deceased sustained severe injuries on his head and he was taken to Govt. Hospital, Berla where he succumbed to his injuries during treatment at 12.15 PM. Report of the said accident was lodged at Police Station – Berla, District – Bemetara (C.G.) against the respondent and in pursuance thereof, Crime No. 64 / 2023 was registered under Section 304-A of the IPC and after completion of the investigation, charge-sheet was filed before the Chief Judicial Magistrate, Bemetara, District Bemetara.
4. The deceased was Agriculturist and was also engaged as Labour work and was earning Rs.12,000/- per month and Rs.1,44,000/- per annum. Thus, the above-stated amount of compensation was claimed by the appellants/claimants.
5. Respondents No. 1 & 2 filed written statement denying the averments made in the claim application and pleaded the negligence on the part of the deceased in causing the accident.
6. Respondent No. 3/Insurance Company filed separate written statement denying substantial pleading made by the appellants/claimants and pleaded the negligence of the deceased in causing the accident. It has

also pleaded that respondent No. 1/driver of the offending vehicle was not having valid & effective driving licence at the time of incident.

7. The Claims Tribunal framed as many as six issues on the basis of above broad pleadings made in the claim application and after after appreciating the oral and documentary evidence available on record, held that the accident had occurred due to involvement of Motorcycle bearing registration No. CG/12/E/0556 and the offending vehicle - motorcycle bearing registration No. CG-04/M.R./3525 being driven by respondent No. 1- Indrabhan Singh Rajpur; driver of both the motor-cycle have contributed to the cause of accident in the ratio of 50:50 percent; insurer of offending vehicle motorcycle bearing registration No. CG/04/MR/3525 liable for payment of compensation to the claimants as it could not establish violation of policy conditions; assessed Rs. 12,65,200/- as compensation payable to the appellants/claimants; deducted 50% of it on account of contributory negligence, and thus awarded Rs. 6,32,600/- as compensation to the appellants/claimants.

8. Learned counsel for the appellants/claimants submits that finding recorded by learned Claims Tribunal in respect of contributory negligence to the extent of 50% is bad in law. He submits that learned Claims Tribunal committed error in holding that as the deceased was not having any valid and effective driving licence, it would amount to contributory negligence to the extent of 50%. He next submits that learned Claims Tribunal also committed an error in determining the age of deceased as 36 years on the basis of photocopy of Aadhaar Car, which was placed in the record, whereas, according to the postmortem of the deceased, he was aged about 28 years at the time of incident. He further submits that the claimants are six in numbers; the Tribunal

has deducted 1/3rd of income of deceased towards his personal expenses whereas in view of judgment of Supreme Court in case of **Sarla Verma (Smt.) & others V. Delhi Transport Corporation and another**[1], the amount of 1/4th should have been deducted for his personal expenses. It is next contended that The income assessed by the Claims Tribunal also appears to be on lower side; no future prospect is award and the compensation on other admissible heads also requires suitable enhancement. Thus, he submits that impugned award may be set aside enhancing the compensation as claimed.

9. None appeared on behalf of respondents No. 1 & 2, despite service of notice to them.

10. Learned counsel appearing for respondent No. 3/Insurance Company while supporting the impugned award would submit that the deceased as well as respondent No. 1 both were driving motorcycles. From the evidence of the claimants itself, it is apparent that both the motorcycles dashed to each other from front. Thus, it can safely be gathered that the both the driver of the motorcycles i.e. deceased and respondent No. 1, equally contributed to the cause of accident. He submits that principle of *res ipsa loquitur* would apply and learned Claims Tribunal has rightly held the deceased negligent to the extent of 50 percent and has rightly deducted 50 percent of amount of compensation towards his contributory negligence. He submits that no documentary evidence was placed on record to prove the age of deceased and the cases in Motor Vehicles Act are summary in nature, thus, for determination of age of deceased, the learned Claims Tribunal has rightly placed reliance upon the photocopy of the Aadhaar card, which was part of the record. He further submits that father of the

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[1] (2009) 6 SCC 121

deceased has also admitted in evidence in his evidence that both the motorcycles were dashed to each other from the front, thus, the finding with regard to contributory negligence of the deceased and respondent No. 1 is based on proper evidence available on record, which does not call for any interference.

11. I have heard learned counsel for the parties and perused the material available on record including record of the Claims Tribunal.

12. The first question, which is before this Court for consideration is as to whether learned Claims Tribunal was justified in deducting 50% amount from the assessed compensation on account of contributory negligence on the part of the deceased ?

13. As per pleading made in the claim application, respondent No. 1 is stringent in causing the accident. From the record, it appears that FIR was lodged against the respondent No. 1 under Section 304-A of the IPC and after completion of investigation, charge-sheet was also filed before Chief Judicial Magistrate, Bemetara, District Bemetara (C.G.). The only one witness was examined before the Claims Tribunal from both the sides. Suman Sahu (AW-1), father of the deceased, has deposed with regard to causing of accident by respondent No. 1 and he is said to be the eye-witness to the incident. Plea of contributory negligence was taken by respondents, but for the reasons best known to them, no witnesses on their behalf have been examined.

14. Learned Claims Tribunal while deciding the issues came to the conclusion that deceased – Sanat Kumar Sahu was not holding valid & effective driving licence to drive the said motor-cycle at the time of accident and the accident had occurred due to collision between two motorcycles. It has further held that nothing is brought on record to say that on the date of

accident, the deceased was having valid & effective driving licence to drive the said motorcycle. Thus, it is held that deceased and respondent No. 1, both have equally contributed to the cause of accident.

15. As has been discussed hereinabove, it is reiterated that there is nothing is brought on record to suggest that any criminal case was lodged against the deceased by respondent No. 1 & 2. Thus, on the basis of facts & circumstances of the case and the criminal papers attached with the record, it could safely be held that it is the respondent No. 1, who was negligent in causing the accident. Mere absence of licence would not *ipso facto* lead to irresistible conclusion with regard to negligence of the driver. The Claims Tribunal cannot presume that if the driver is not holding driving licence, he has equally contributed to the cause of accident.

16. Hon'ble Supreme Court in the case of **Sudhir Kumar Rana Vs. Surinder Singh & others**[2] has held as under :-

> "8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the drive of the mini truck which was being rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence."

17. Further, Hon'ble Supreme Court in the matter of **Saraswati Palariya and others v. New India Assurance Company Ltd. and**

[2] (2008)12 SCC 436

others[3] has clearly held that the finding of the High Court of contributory negligence on the ground that the deceased was driving licence is equally unsustainable. It has further been held that driving without a vaild driving licence may expose the claimant(s) to other liabilities but no inference of contributory negligence can be arrived on that basis.

18. Similarly, the plea of contributory negligence alone is not sufficient and it must be supported by evidence. In the matter of **Prabhavati and others v. Managing Director, Banglore Metroplitan, Transport Corporation**[4], the Hon'ble Supreme Court placing reliance on the decision of **Jiju Kuruvila v. Kunjujamma Mohan** held that in the absence of any direct or corroborative evidence on record, it cannot be assumed that the accident occurred due to the rash and negligent driving of both the vehicles.

19. Mere pleading with regard to contributory negligence itself is not sufficient to prove of the same, rather pleadings are required to be proved by leading cogent and clinching evidence.

20. Thus, relying upon aforesaid dicta of the Supreme Court and on assessment of evidence available on record, finding recorded by learned Claims Tribunal holding that the deceased – driver contributed to the cause of accident to the extent of 50 percent does not appear to be based on proper appreciation of evidence, therefore, the same is liable to be and is hereby set aside.

21. Now, coming to the next point for determination before this Court as to whether the deceased was aged about 28 years or 37 years as held by learned Claims Tribunal ?

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3 (2018) SCC Online SC 3988

4 (2023) SCC Online SC

22. The learned Claims Tribunal, on the basis of the photocopy of the Aadhar Card, which was part of the record, held that the date of birth of the deceased as 6.10.1985 and his age as 37 years, 4 months and 6 days and for the purpose of calculation of compensation, he was found to be 37 years of age. In a recent judgment in case of **Saroj and Others Vs. Iffco Tokio General Insurance Co. and Others**[5], the Hon'ble Supreme Court after taking into consideration various orders passed by different High Courts and circulars of Unique Identification Authority of India accepted the contention of claimant based on the school leaving certificate for determination of age.

23. Even otherwise, as per pleading made in the claim application, deceased was aged about 28 years. Father of the deceased namely; Suman Sahu (AW-1), who has also stated in his evidence recorded before the Claims Tribunal that his son (deceased) was aged about 28 years. Age of father of the deceased is 55 years, age of mother of the deceased is 50 years. No question was asked by the respondents with respect to age of the deceased to be 37 years thus, the respondents have not disputed the age of the deceased. Thus, this Court can safely hold that deceased was aged about 28 years at the time of accident. In the opinion of this Court, aforesaid finding recorded by Claim Tribunal is grossly illegal & unjustified, as according to the Postmortem report conducted by the doctors, which is part of the record, deceased was aged about 28 years at the time of accident.

24. This leads me to the last point, which is to be determined by this Court with regard to quantum of compensation awarded to the claimants.

25. According to learned counsel for the appellants/claimants, deceased

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[5] (2024) SCC Online 3038

was earning Rs.12,000/- per month being Farmer and also by doing the work of Labourer.

26. Learned Claims Tribunal on the basis of minimum wages on the date of incident held the monthly income of the deceased as Rs.9,960/- per months. In absence of any other cogent evidence, finding of learned Claims Tribunal with regard to income of the deceased appears to be just & proper and, thus, the same is hereby maintained by assessing monthly income of the deceased as Rs.10,000/- per month (round off). Further, the Claims Tribunal has only deducted 1/3 of the income of the deceased towards his personal expenses, which in light of the judgment of the Supreme Court in the case of **Sarla Verma** (Supra) is incorrect as the claimants, who are father, mother, widow, children and brother of the deceased, who are six in number, therefore, I am of the view that the Tribunal has erred in deducting 1/3rd in place of 1/4th income of the deceased towards his personal expenses. Therefore, I propose to re-compute the amount of compensation by deducting 1/4th of the income of deceased towards his personal expenses.

27. For the foregoing discussions, I find it appropriate to re-compute the amount of compensation as under:-

S. N.	Heads		Compensation
1.	**(A)Loss of Income/dependency** **10,000 x 12 = 120120** **(B) Addition towards future prospects @ 40% (1,20,000/- x 40% =48,000)** **1,20,000+ 48000 = 1,68,000/-** **(C)Deduction of 1/4 towards**	:	**Rs. 21,42,000/-**

	personal and living expenses **(1,68,000/- x *1/4* =)** **1,68,000- 42,000 = 1,26,000/-** **(D) Multiplier of 17** **1,26,000 x 17 = 21,42,000/-**		
2.	**Funeral Expenses**	:	**(+) Rs. 16,500/-**
3.	**Loss of estate**	:	**(+) Rs. 16,500/-**
4.	**Spouses consortium**	:	**(+) Rs. 44,000/-**
5.	**Loss of filial consortium to claimants/appellants No.1,2,4 & 5 = 40,000/- each**		**(+) Rs. 1,60,000/-**
	Total compensation		**Rs. 23,79,000/-**

28. Now the appellants/claimants is awarded total compensation of **Rs. 17,46,000/-** {Rs. 23,79,000/- - Rs.6,32,600/-} instead of Rs. 6,32,600/- as awarded by the Claims Tribunal on account of contributory negligence of the deceased.

29. Aforementioned total amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization.

30. The respondent No. 3/ICICI Lombard General Insurance Company Ltd. is granted 60 days' time from the date of receipt of copy of this order to deposit enhanced amount of compensation of **Rs. 17,46,000/-** along with interest before the concerned Tribunal .

31. After the deposit is being made, Rs. 5,00,000/-(five Lacs) each be invested in the name of appellant Nos. 4 & 5 in a Nationalized Bank till they attain the age of majority; Rs. 4,00,000/- in the name of appellant No. 4 for a period of 2 years and Rs. 1,00,000/-(one lac)each be

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disbursed to appellant No. 1 & 2. Remaining amount be disbursed to appellant No. 1 through Bank transaction.

32. In the result, appeal is allowed in part. Impugned award is modified to the extent as indicated herein above. No order as to costs.

Sd/-

(Sachin Singh Rajput)

Judge

Ami