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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 371 of 2018

1 - Bajaj Allianz General Insurance Company Pvt. Limited Shiv Mohan Bhavan Vidhansabha Marg Pandri Raipur, Tehsil And District Raipur, Chhattisgarh (Insurer Of Vehicle No. C.G.04 T 5566), District : Raipur, Chhattisgarh.

... Appellant(s)

versus

1 - Smt. Laxmi Allies Priya Chhugani Wd/o Late Dr. Motilal Chhugani Aged About 51 Years R/o C-21, Gayatri Nagar, Post Shankar Nagar Raipur, Tahsil And District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh.

2 - Ku. Ankita Chhugani D/o Late Dr. Motilal Aged About 24 Years R/o C-21, Gayatri Nagar, Post Shankar Nagar Raipur, Tahsil And District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh.

3 - Prashabh Chhugani S/o Late Dr. Motilal Chhugani Aged About 20 Years R/o C-21, Gayatri Nagar, Post Shankar Nagar Raipur, Tahsil And District Raipur, Chhattisgarh (Claimants), District : Raipur, Chhattisgarh.

4 - Sandeep Agrawal S/o Late Shivkumar Agrawal Aged About 21 Years R/o Behind Bti Ground, House No.273, Shankar Nagar Raipur Thana Civil Lines Raipur Tahsil And District Raipur, Chhattisgarh (Driver Of Vehicle Car No. C.G.-04-T-5566), District : Raipur, Chhattisgarh.

5 - Sandip Agrawal S/o Late Shivkumar Agrawal Aged About 21 Years R/o Behind Bti Ground, House No.273, Shankar Nagar Raipur Thana Civil Lines Raipur Tahsil And District Raipur, Chhattisgarh (Owner Of Vehicle Car No. C.G.-04-T-5566), District : Raipur, Chhattisgarh.

6 - Dagashwar Nayak S/o Banwali Nayak Aged About 38 Years R/o Village Bansankra, Thana Simga, District And Tahsil Raipur, Chhattisgarh (Alleged Driver Of Vehicle Car No. C.G.-04-T-5566), District : Raipur, Chhattisgarh.

... Respondent(s)

For Appellant(s)	:	Mr. Ghanshyam Patel, Advocate.
For Respondent(s) No. 1 to 3	:	Mr. Annirudhha Shrivastava, Advocate.
For Respondents No. 4 to 6	:	None though notice has been served.

<u>Hon'ble Mr. Justice Amitendra Kishore Prasad</u>

<u>Order on Board</u>

<u>20/01/2026</u>

1. The present is Insurance Company's appeal assailing the award dated 5.12.2017 passed by the learned Member, 9th Additional Motor Accident Claims Tribunal, Raipur, District-Raipur (C.G.) in Claim Case No. 95/11, whereby the Claims Tribunal has awarded

a compensation of Rs. 89,67,000/- with interest @ 9% per annum in favour of claimants/respondents No. 1 to 3 herein.

2. Brief facts of the case, is that, respondent Nos. 1 to 3, being the wife and children of the deceased Dr. Motilal Chhugani, filed an application under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs. 2,69,75,000/-. During the inquiry, the Tribunal found that respondent No. 4 was the driver and respondent No. 5 was the owner of the vehicle bearing registration No. CG-04-T-5566, while the appellant was its insurer. It was alleged in the claim application that on 15.03.2010 at about 10:00 PM, the deceased was proceeding towards his home on his scooter bearing No. CG-04-CP-9997 at a slow speed, when the offending vehicle, driven rashly and negligently by respondent No. 4, collided with him, causing grievous injuries, and despite being hospitalized, he succumbed to his injuries on 22.03.2010. The accident was reported at Police Station Pandri, Raipur, and Crime No. 103/2010 was registered under Sections 304-A, 182, 193, and 203 of the IPC. It was further pleaded that the deceased was aged 52 years, earning Rs. 1,00,000/- per month, and that the claimants were dependent on his income. Notices were issued to all respondents, and respondent Nos. 4, 5, and 6 filed their written statements denying liability and alleging that the deceased was responsible for the accident. The appellant insurance company also denied the allegations and contended that the vehicle was registered as a taxi without a valid permit, that there was driver

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swapping, and that the vehicle was being used in violation of policy conditions. The appellant examined its officials, RTO authorities, and the investigating officer and produced relevant documents, while respondent No. 5 produced the registration certificate, fitness certificate, driving licence, and insurance policy and examined witnesses claiming that respondent No. 6 was the driver. However, the evidence led by the appellant established that the vehicle was a taxi requiring a valid permit and that respondent No. 6 was not driving the vehicle, and the Tribunal found that respondent No. 4 was the actual driver. The appellant also produced an investigation report and income tax records showing that the deceased's income for the relevant years was much lower than claimed, and that no income tax had been paid, which remained unchallenged. Although the claimants relied upon ITRs for the assessment years 2008-09 and 2010-11, the Tribunal did not accept them and assessed the income notionally at Rs. 3,000/- per day, yet held the appellant liable to pay compensation. An application under Section 170 of the Act was allowed, enabling the appellant to contest the claim on all grounds, and the appellant deposited Rs. 25,000/- under Section 173 of the Act. A caveat under Section 148-A CPC was filed by the claimants, though the same was not applicable under Rule 240 of the Chhattisgarh Motor Vehicles Rules. It is contended that the Tribunal passed the impugned award without properly appreciating the facts and law and without conducting a proper inquiry under Sections 168 and 169 of the Act.

3. Learned counsel for the appellant submits that the claimants alleged that the accident dated 15.03.2010 occurred due to rash and negligent driving by Respondent No.4, the appellant, in its written statement, specifically pleaded that at the time of the accident the offending vehicle was being driven by one Mr. Sumit Agrawal, who was later swapped revealed by the police authorities with Mr. Dageshwar Nayak in collusion, as the actual driver did not possess a valid driving licence. It is further contended that the offending vehicle was registered as a taxi and was being plied without a valid permit and fitness certificate, in clear violation of the terms and conditions of the insurance policy and Section 66 of the Motor Vehicles Act. In support of its case, the appellant examined NAW-5 R.L. Bharti, who categorically deposed that Sumit Agrawal was driving the vehicle at the time of the accident, and NAW-4 Rajesh Kumar Bhargav, who proved that the vehicle was registered as a taxi and lacked valid permit and fitness on the date of the accident. Despite recording a finding that the vehicle was without permit and fitness, the learned Tribunal erroneously held that permit was not required, which is contrary to law. Learned counsel further submits that the claimants failed to produce any reliable evidence regarding the education, occupation, and actual income of the deceased, and even the claimant admitted the same in her testimony. Though Income Tax

Returns were available on record showing much lower income, the Tribunal, without any legal basis, assumed the income of the deceased as Rs. 3,000/- per day and awarded excessive compensation. It is therefore argued that the assessment of income is arbitrary, contrary to settled principles, and amounts to unjust enrichment, and that since the vehicle was being used in violation of statutory provisions and policy conditions, the Insurance Company cannot be held liable and the compensation deserves to be reassessed accordingly. He has placed reliance upon the judgments passed by the Hon'ble Supreme Court in the matters of ***Amrit Paul vs. Tata AIG General Insurance Company, (2018) 7 SCC 558, K. Nagendra vs. New India Insurance Company Limited, (2025) SCC Online SC 2297 and Nidhi Bhargava vs. National Insurance Company Limited decided in SLP (C) No. 10664 of 2019.*** He has also placed reliance upon the judgment passed by the High Court of Kerala in the matters of ***Ramankutty vs. Pareed Pillai, 2018 SCC Online Ker 3542.***

4. Learned counsel for respondent Nos. 1 to 3 submits that the only relief sought by the appellant against the respondents No. 1 to 3 relates to the award amount, primarily on the ground that the learned Court below had allegedly wrongly assessed the income of the deceased, who was an M.B.B.S. practitioner running a private clinic and medical store, at Rs. 3,000/- per day in the absence of any documentary evidence. It is further submitted that

although the appellant had relied upon photocopies of Income Tax Returns filed by the answering respondents during the trial, the appellant had himself objected to the admissibility of those documents on the ground that they were not duly proved through the Income Tax Department, and such objection was accepted by the trial court, which consequently did not rely upon the said documents and assessed the monthly income on the basis of surrounding circumstances. It is contended that once the appellant had objected to those documents and the Court had upheld such objection, he cannot now, at a later stage, seek to rely upon the same documents merely because the outcome is not in his favour. Therefore, the appellant is not entitled to derive any benefit from the said documents at this stage and cannot claim any relief against respondent Nos. 1 to 3. It is further submitted that the grounds raised in the appeal are not available against the respondents No. 1 to 3, and hence the appellant is not entitled to any relief whatsoever, and the present appeal deserves to be dismissed. He has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the matter of ***New India Assurance Company Limited vs. Sonigra Juhi Uttamchand, (2025) 3 SCC 23.***

5. None for respondents No. 4 to 6 though notice has been served.

6. I have heard learned counsel for the parties and perused the material available on record.

7. Upon hearing learned counsel for the parties, perusing the record, and considering the submissions advanced, this Court finds that the learned Tribunal has properly appreciated the oral and documentary evidence on record, correctly held respondent No.4 to be the driver of the offending vehicle, and reasonably assessed the income of the deceased on the basis of surrounding circumstances after rejecting the Income Tax Returns on the objection raised by the appellant itself. Further, the appellant has failed to establish any fundamental breach of policy conditions so as to absolve it of liability, and no perversity, illegality, or material irregularity is found in the impugned award warranting interference in appellate jurisdiction.

8. Accordingly, the appeal being devoid of merit is liable to be and accordingly **dismissed.**

Sd/-

(Amitendra Kishore Prasad)
Judge

Raghu Jat