



2025:CGHC:38923



2025:CGHC:38923

NAFR

HIGH COURT OF CHHATTISGRH AT BILASPUR

MAC No. 1949 of 2019

1. Gangeshwar S/o. Late Sudama Prasad Kushwaha Aged About 27 Years
2. Umeshwar Sharan S/o Late Sudama Prasad Kushwaha Aged About 20 Years
3. Sudha Kumari D/o Late Sudama Prasad Kushwaha Aged About 22 Years All are R/o. Village Girjapur, Police Station Patna, Tahsil Baikunthpur, District Koriya Chhattisgarh
4. Smt. Anita Kushwaha D/o Late Sudama Prasad Kushwaha Aged About 35 Years W/o. Ramakant Kushwaha, R/o Village Sirsi, Police Station And Tahsil Bhaiyathan, District Surajpur Chhattisgarh
5. Smt. Rita Kushwaha D/o Late Sudama Prasad Kushwaha Aged About 32 Years W/o Sushil Kushwaha, R/o. Kotya-Salka, Police Station And Tahsil Bhiyathan, District Surajpur Chhattisgarh
6. Smt. Meena Kushwaha D/o Late Sudama Prasad Kushwaha Aged About 30 Years W/o. Kamla Prasad, R/o Village Barbaspur, Police Station And Tahsil Ramanujnagar, District Surajpur Chhattisgarh

--- Appellants/ Claimants

versus

1. Rashid Ahmad S/o. Nisar Ahmad Aged About 35 Years R/o. Village And Post Patna, Tahsil Baikunthpur, District Koriya Chhattisgarh. (**Owner** of offending Vehicle Motorcycle Bearing Registration No. C.G.-16-CE-4584)
2. Rajesh Kumar Sahu S/o. Heeraram Sahu Aged About 20 Years R/o Village And Post Mahora, Police Station Patna, Tahsil Baikunthpur, District Koriya Chhattisgarh. (**Driver** of offending Vehicle Motorcycle Bearing Registration No. C.G.-16-CE-4584)
3. Branch Manager Iffco Tokiyo General Insurance Company Limited, 2nd Floor, Shop No. 205, M.M. Silver Plaza (Nearby Mining Office), Ring Road No. 1, Raipur, Tahsil And District Raipur Chhattisgarh. (**Insurer** of offending Vehicle Motorcycle Bearing Registration No. C.G.-16-CE-4584)

--- Respondents

WITH

**MAC No. 639 of 2020**

- I F F C O Tokiyo General Insyurance Company Limited 205, Second Floor, M.M. Silver Plaza, In Front Of Udyog Bhawan, Near Mining Office, Ring Road No. 01, Raipur, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---Appellant**Versus**

1. Gangeshwar S/o Late Shri Sudama Prasad Kushwaha Aged About 27 Years
2. Umeshwar Sharan S/o Late Shri Sudama Prasad Kushwaha Aged About 20 Years
3. Sudha Kumari D/o Late Shri Sudama Prasad Kushwaha Aged About 22 Years

All are R/o Village Girjapur, Police Station Patna, Tashil Baikunthpur, District Korla, Chhattisgarh

4. Anita Kushwaha D/o Late Shri Sudama Prasad Kushwaha Aged About 35 Years W/o Ramakant Kushwaha, Aged About 35 Years, R/o Village Sirmi, Police Station And Tahsil Bhaiyyathan, District Surajpur Chhattisgarh
5. Smt. Rita Kushwaha D/o Late Shri Sudama Prasad Kushwaha Aged About 32 Years W/o Sushil Kushwaha, R/o Village Kotaya Salka, Police Station And Tahsil Bhaiyyathan, District Surajpur, Chhattisgarh
6. Smt. Meena Kushwaha D/o Late Shri Sudama Prasad Kushwaha Aged About 30 Years W/o Kamla Prasad, R/o Village Barbaspur, Police Station And Tahsil Ramanuj Nagar, District Surajpur, Chhattisgarh, District : Surajpur, Chhattisgarh
7. Rashid Ahmad S/o Nisar Ahmad Aged About 35 Years R/o Village And Post Patna, Tahsil Baikunthpur, District Korla, Chhattisgarh
8. Rajesh Kumar Sahu S/o Hiraram Sahu Aged About 20 Years R/o Village And Post Mahora, Police Station Patna, Tahsil Baikunthpur, District Korla Chhattisgarh

--- Respondents

MAC No. 1949 of 2019

For Appellants-Claimants : Mr. Anil Gulati, Advocate
For Respondents No. 1 & 2 : Mr. Adarsh Rajput, Advocate
For Respondent No. 3 : Mr. P.R. Patankar, Advocate with Mr. Pravesh Sahu, Advocate

MAC No. 639 of 2020

For Appellant : Mr. P.R. Patankar, Advocate with Mr. Pravesh Sahu, Advocate
For Respondents No. 1 to 6 : Mr. Anil Gulati, Advocate
For Respondent No. 7 & 8 : Mr. Adarsh Rajput, Advocate

**Hon'ble Shri Justice Parth Prateem Sahu****Judgment On Board****05/08/2025**

1. As both these appeals arise out of the same award, they are being heard together and dispose of by this common order.
2. Challenge in these appeals is to the impugned award dated 06.08.2019 passed by Learned Motor Accident Claims Tribunal, Baikunthpur District Koriya, Chhattisgarh (for short "Claims Tribunal") in Claim Cases No. 13/2016, whereby Claims Tribunal allowed the application filed under Section 166 of the Motor Vehicles Act, 1988 (for short "Act of 1988") by the applicants in part and awarded ₹ 5,22,300 in motor accidental death case and fastened first liability to satisfy the compensation upon non-applicant No. 3-Insurance Company.
3. MAC No. 1949 of 2019 is filed by appellants-claimants seeking enhancement of amount of compensation, whereas MAC No. 639 of 2020 is filed by appellant- insurance company challenging the liability fastened upon it to satisfy the award.
4. As the death of late Smt. Shanti Bai due to motor accidental injuries suffered by her in an accident occurred on 19.08.2015 by the motor cycle bearing number CG16 CE 4584 (hereinafter referred to as "offending motorcycle") owned by non-applicant No.1-Rasid Ahmed, driven by non-applicant No. 2-Rajesh Kumar Sahu, rashly and negligently and insured by non-applicant No. 3 is not in dispute and therefore I am not discussing the facts of the case as pleaded in the claim application, reply submitted by respective parties thereto and only considering the grounds raised by the appellants-claimants seeking enhancement of compensation and grounds raised by the appellant-insurance company seeking its exoneration from the liability of satisfying the award of compensation as awarded by the Claims Tribunal.



5. Appellants-Claimants in MAC No. 1949 of 2019 are children of deceased. Claimants No. 1 and 2 are sons, claimants no. 3 to 6 are daughters. Claimants No. 2 and 3 are unmarried son and daughter and other children of the deceased are married i.e., claimants No. 1, 4 to 6.
6. Learned counsel for appellants-claimants would submit that the Claims Tribunal erred in awarding meager sum of compensation by assessing income of deceased as ₹ 4,500 per month. On the date of accident i.e., 19.08.2015 deceased was running kirana shop and also doing the work of tailoring and thereby earning ₹ 22,000 – 25,000 per month. He also submits that the amount of compensation under other conventional heads is also not appropriately awarded.
7. Learned counsel for respective respondents opposes the submission of learned counsel for appellants-claimants and would submit that the Claims Tribunal in the facts of the case has awarded just and proper compensation which does not call for any interference. Claims Tribunal justified in assessing income of deceased on notional basis in absence of proof of income.
8. I have heard learned counsel for the respective parties and also perused the record.
9. Pleadings made in claim application and stated by witness AW-1 i.e., claimant No. 1 with regard to income is not proved by placing clinching and admissible evidence before the Claims Tribunal. No admissible evidence is brought on record by the claimants in this regard and therefore, in the opinion of this Court, Claims Tribunal justified in taking recourse to assess income of deceased on notional basis, however, fell into error in assessing income of deceased as only ₹ 4,500 per month without giving any justification. If for any reason claimants failed to prove income of deceased by admissible evidence then also the Tribunals or Courts are required to assess income of deceased/injured keeping in mind certain factors like age of deceased, date of accident, cost of living, price index and wages prevailing on the date of accident i.e., of



the year 2015, in the area of which deceased was resident and can take help of minimum wages fixed by the competent authority for the unskilled, semi skilled and skilled labourer.

10. In the case at hand, as there is no suggestive evidence in record to arrive at a conclusion with regard to daily wages prevailing in the area of which claimant was resident of. Age of deceased on the date of accident is held to be 55 years and she was a healthy lady as per the pleadings made in the claim application. Even if her occupation is not proved and she is to be treated as housewife then also looking to the nature of work which a female member of the house execute to maintain her house and family with no fixed working time, income of such person cannot be considered to be less than the income of a labourer. Therefore, I find it appropriate to assess occupation of deceased to be one of the labourer. Date of accident is 19.08.2015, deceased was a resident of Baikunthpur, Koriya, and as per the notification issued by the competent authority under the Minimum Wages Act, 1948, minimum wages fixed for the period from 01.04.2015 till 30.09.2015 for unskilled labourer of C-Zone area was ₹ 5,787/- per month. Therefore, I find it appropriate to determine monthly income of deceased as ₹ 5,787. It is ordered accordingly.
11. Claims Tribunal has further added 10% towards future prospects, applied multiplier of 9 and further awarded ₹ 40,000 towards loss of filial consortium, ₹ 15,000 towards funeral expenses which are to the tune of decision of Hon'ble Supreme Court in cases of **Sarla Verma & others v. Delhi Transport Corp. & anr.** reported in (2009) 6 SCC 121, **National Insurance Company Limited vs. Pranay Sethi & ors**, reported in (2017) 16 SCC 680 and **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in (2018) 18 SCC 130.
12. Claims Tribunal fell into error in applying deduction of 1/2 overlooking the guidelines issued by the Hon'ble Supreme Court in this regard in case of



Sarla Verma (supra), wherein it is held that where number of claimants are 2 to 4, appropriate deduction would be 1/3. Upon considering the evidence of AW-1, ie., claimant No. 1, it is appearing that claimants No. 1, 4 to 6 are married, claimants no. 2 & 3 are unmarried son and daughter and therefore, even if two unmarried children of the deceased is to be considered to be dependent upon her, there shall be deduction of 1/3. It is ordered accordingly.

13. Claims Tribunal has not awarded compensation under the head of loss of estate as held in the case of **Pranay Sethi (supra)**. Compensation under the head of other conventional heads is to be enhanced by 10% in every three years. Therefore, amount of compensation under the heads of funeral expenses would be ₹ 16,500 instead of ₹ 15,000, loss of estate would be ₹ 16,500 instead of ₹ 15,000, and loss of parental consortium to all the claimants would be ₹ 44,000 each.
14. For the foregoing discussion, the amount of compensation to be awarded to appellants-claimants requires recomputation, which is as under.

Particulars	Compensation
- Annual Loss of income = ₹ 69,444/- (₹5787x12) - Addition towards loss of future prospects @ 10%; ₹ 69,444 + 10% of ₹ 69,444= ₹ 76,388 - Deduction of 1/3 towards personal and living expenses= (₹ 76,388 x 1/3= ₹ 25,463); ₹ 76,388 - ₹ 25,463 = ₹ 50,925 - Multiplier of 9 (₹ 50,925 x 9 = ₹ 4,58,325)	₹ 4,58,325/-
Loss of Parental Consortium to Appellants (₹ 44,000 each)	₹ 2,64,000/-
Loss of estate	₹ 16,500/-
Funeral Expenses	₹ 16,500/-
Total	₹ 7,55,325/-

15. Now the appellants/claimants shall be entitled for total sum of compensation of ₹ **7,55,325/-** instead of ₹ 5,22,300/- as awarded by learned Claims



Tribunal. The enhanced amount of compensation shall carry interest @ 8% p.a. from the date of filing of claim application till its realization.

- Any amount paid to the appellants-claimants pursuant to the impugned award shall be adjusted from the amount of compensation as calculated above.
- Rest of the conditions of impugned award as imposed by the Claims Tribunal shall remain intact.

16. So far as the appeal filed by the appellant-insurance company in MAC No. 639 of 2020 is concerned, the ground to challenge the impugned award is that the Claims Tribunal though has recorded a finding that on the date of accident, driver of the offending motorcycle was not having valid and effective driving licence but has recorded a finding that non-applicant No. 3 failed to prove breach of policy conditions.
17. Learned counsel for appellant-insurance company had read-over the finding recorded by the Claims Tribunal in para-15 of the award and would submit that in para-15, Claims Tribunal has recorded a finding that it is proved that on the date of accident, non-applicant No. 1 was not possessed with valid and effective driving licence and further that the insurance company failed to prove that the offending motorcycle was being plied in breach of policy conditions.
18. To appreciate the submission of learned counsel for appellant, I have perused the record. Perusal of record would show that before the Claims Tribunal non-applicant No. 3 had not lead any evidence, no witness(es) was examined on its behalf to prove the conditions of insurance policy. In para-13 of the award there is mention that non-applicant No. 1 has produced photocopy of insurance policy for perusal of Tribunal, however, policy is not exhibited. If the plea is taken by the insurance company that the vehicle was being driven in breach of policy conditions then it was for the insurance company to prove the conditions of insurance policy. In absence of prove of



conditions as mentioned in the insurance policy, merely on the basis of pleadings made in the reply will not be considered to be admissible in evidence to reach to conclusion that there was breach of policy conditions.

19. Issuance of insurance policy for the offending motorcycle effective on the date of accident is not disputed by the counsel for appellant-insurance company. His contention is that though the policy was effective on the date of accident, however, condition(s) of insurance policy was breached. As non-applicant No. 3/ insurance company has not brought on record copy of insurance policy and proved the documents by examining witness(es), in the opinion of this Court, Claims Tribunal justified in recording a finding that non-applicant No. 3 failed to prove breach of policy conditions.
20. Perusal of order-sheet recorded by the Claims Tribunal would show that when the case was fixed for recording evidence of the witnesses of non-applicant No. 3-insurance company, counsel representing non-applicant No. 3 therein made statement before the Claims Tribunal that they did not want to give any evidence. It is non-applicant No. 3-insurance company who chose not to give any evidence in support of the pleading made in reply to the claim application. It is settled law that pleadings cannot take place of evidence.
21. For the foregoing discussion, I do not find any good ground to interfere with the impugned award passed by learned Claims Tribunal recording a finding that non-applicant No. 3-insurance company failed to prove that there was breach of policy conditions.
22. Consequently, the appeal filed by the appellants-claimants is allowed in part and the impugned award is modified to the extent as indicated hereinabove and the appeal filed by the appellant-insurance company being *sans* merit is dismissed.

Sd/-
(Parth Prateem Sahu)
Judge