2026:CGHC:12563

**NAFR**



**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**MAC No. 1181 of 2018**

The Oriental Insurance Company Limited Branch Office 16 R.S.S. Market, Power House, Bhilai, Tehsil And District Durg.

**... Appellant.**

**versus**

**1 -** Smt. Surujbai W/o Late Ishwar Sinha, Aged About 34 Years.

**2 -** Rekhchand, S/o Late Ishwar Sinha Aged About 14 Years.

**3 -** Sandeep S/o Late Ishwar Sinha, Aged About 11 Years.

**4 -** Ramadhin S/o Bhurwa Sinha, Aged About 55 Years.

**5 -** Smt. Nemkunwar Bai W/o Ramadhin Sinha, Aged About 50 Years.

Respondent Nos.2 and 3 minor through mother Respondent No.1 Smt. Surujbai w/o Late Ishwar Sinha. All caste Kalar, all R/o Village Belgaon Tehsil Chhuikhdan, District Rajnandgaon Chhattisgarh. **(Claimants)**

**6 -** Ramjan Beg S/o Gulbeg Aged About 28 Years R/o Village Ninwa, Post Ninwa, Tehsil And Thana And District Bemetara Chhattisgarh. **(Owner)**

**... Respondents.**

| | | |
|---|---|---|
| For Appellant | : | Shri Shashank Agrawal appears on behalf of Shri Sudhir Agrawal, Advocates. |

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

**<u>Judgment on Board</u>**

**<u>16/03/2026</u>**

1. This Appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the appellant/Insurance Company against the award dated 20.02.2018 passed by the Additional Motor Accident Claims Tribunal Khairagarh, District Rajnandgaon C.G. in Claim Case No.74/2014, whereby compensation to the tune of Rs.4,34,000/- has been awarded in favour of claimants/Respondent Nos.1 to 5 which was directed to be paid by appellant/Insurance Company and Respondent No.6. The compensation was directed to carry 6% per annum interest from the date of claim petition till its realization.
2. The facts of the case as per the claimants are that on 01-01-2014 at about 3.00 PM, deceased Ishwar Sinha was driving one motor cycle, and at the same time from the front side, another offending

Motor Cycle no. C.G. 07 A.L. 2789 driven by Gulbeg came driven in a rash manner and dashed the above motor cycle driven by Ishwar Sinha, and due to accident both Ishwar Sinha and Gulbeg died. Due to death of driver Ishwar Sinha, this claim petition was filed, before tribunal. That in this claim petition, owner and Insurance company of this motor cycle no. C.G. 07 L.G. 8223 driven by Ishwar Sinha, were necessary party, and in absence of necessary party, above claim petition was liable to dismissed. Against driver Gulbeg, for offending motor cycle no. C.G. 07 A.L. 2789, FIR was lodged, as per para 17 of award but due to death of above driver Gulbeg, above criminal report was dropped by the police. That, even after demand of document of driving licence of driver Gulbeg by appellant insurance company through notice to produce document from owner of offending motor cycle no. C.G. 07 A.L. 2789, but no document of driving licence could be supplied by respondent no. 6 Ramjan Beg in compliance of section 134 M.V. Act, but tribunal wrongly awarded, against the appellant insurance company, which may be considered by this Court. That the tribunal has wrongly awarded excess compensation, which may be considered. Further, the tribunal has wrongly awarded penal interest, which may be considered. Because above accident occurred due to fault of both the motor cycles and dashed from front side, hence on the basis of contributory negligence, matter was to be decided by the tribunal.

3. The Tribunal after considering that no documentary evidence has

been produced with regard to the income of the deceased, held the annual income of the deceased to be Rs.36,000/-. 1/3 of the annual income which comes to Rs.12,000/- was held personal expenses and accordingly, yearly dependence was held to be Rs.24,000/-. Deceased was aged about 36 years and by applying the multiplier of 16, Rs.3,84,000/- was calculated to be the quantum for dependence. Funeral expenses to be Rs.10,000/-, for loss of filial consortium Rs.20,000/- and for loss of parental consortium Rs.20,000/- and thereby, total of Rs.4,34,000/- was granted as compensation to the claimants/respondent Nos.1 to 5.

4. Learned counsel for the appellant/Insurance company submits that at the time of accident, the offending vehicle bearing registration No.CG 07 AL 2789 was being driven by Gulbeg without driving license as such, the Insurance Company is not liable to pay compensation. He further submits that even after giving notice to produce document of driving license from Respondent No.6, no driving license was produced by Respondent No.6. In compliance of Section 134 of Motor Vehicle Act, copy of driving license was to be supplied in the record of Tribunal, however, even after demand, the same was not supplied by Respondent No.6. As after supply of details of driving license, Insurance Company will inquire about the genuineness of the said document of driving license. He lastly submits that in a similar case arising out of same accident bearing No.MAC/1152/2018, the Insurance company has been exonerated from the liability by

this Court and the penal interest has also been set aside. Thus, this Court may exonerate the appellant from the liability and set aside penal interest.

5. Learned counsel for the appellant placed reliance on the judgment passed by division Bench of this Court in the matter of **The Oriental Insurance Co. Ltd. vs. Ansuiya Bai & Ors** in **MAC No.1250 of 2011,** decided on 06.09.2012. Relevant paragraph 7 of the said judgment reads as under:-

> **7.** It is not in dispute that in respect of accident which occurred on 6.4.2010 involving the offending vehicle, a criminal case has been registered against the respondent No.6/driver of the offending vehicle for offences under Sections 279, 337 of 1.P.C. and after investigation, a charge-sheet for offences under Section 279, 338 and 304-A of I.P.C. and under Sections 3/181 and 5/181 of the Act has been filed against the respondents No.6 & 7 ie, driver and owner of the offending vehicle. As per certified photocopy of seizure memo, which has been filed on behalf of respondents No.1 to 5/claimants along with other documents and marked as (Ex.P-3), driving license of respondent No.6/driver of the offending vehicle was not seized by the police whereas other documents relating to the offending vehicle were seized. Under Section 134 of the Act, a duty has been cast upon the

driver of the offending vehicle involved in an accident to give particulars of his driving license alongwith other documents to the investigating officer and in explanation to the abovementioned Section, driver "includes owner of the vehicle". From perusal of the record of Court below, it is found that despite service of notice upon driver and owner (respondents No.6 & 7) of the offending vehicle, they neither appeared before the Claims Tribunal nor filed their reply to the claim petition nor has furnished particulars of the driving license of driver/respondent No.6 before the Claims Tribunal for which they were duty bound to furnish the same as per the provision of Section 134 of the Act. Neither the owner (respondent No.7) nor the driver (respondent No.6) had entered into the witness box to depose that at the relevant point of time, the driver (respondent No.6) was possessing a valid and effective driving license to drive the offending vehicle. In the absence of particulars of driving license of the driver (respondent No.6), it was not possible for the appellant to verify about the genuineness or otherwise of the driving license of the driver. As such, on the basis of evidence adduced before the Claims Tribunal as well as the conduct of the driver (respondent No.6) and owner (respondent No.7) of the offending vehicle,

> it stands proved that at the time of accident, the driver (respondent No.6) was not possessing a valid and effective driving license to drive the offending vehicle and the Claims Tribunal has not erred in holding the same and exonerating the appellant from its liability to pay compensation."

6. None for Respondent No.6, though served.
7. I have heard learned counsel for the appellant and perused the material available on record.
8. From the perusal of record, it appears that the appellant / Insurance Company demanded the driving license of deceased driver Gulbeg from Respondent No.6/owner. In the written statement filed by him, details of driving license is not reflected. In the Appeal also, there is no evidence regarding driving license of deceased driver Gulbeg, therefore, relying upon the judgment dated 06.09.2012 passed in the matter of **Ansuiya Bai & Ors** (**referred to above**) , the appellant/ Insurance Company cannot be held liable to pay the compensation due to lack of driving license of driver of offending vehicle. The witness of appellant/Insurance company namely Punit Kumar Dewangan (NAW-1) has also deposed that at the time of accident, driver /Gulbeg of the offending vehicle was not having valid and effective driving license.
9. In view of such, the appellant / Insurance Company is exonerated from the liability to pay the compensation.

10. So far as penal interest is concerned, it is also set aside in light of the judgment of Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd. vs. Keshav Bahadur & Ors. {(2004) 2 SCC 370}.**

11. In a motor accident claim case, what is important is that, the compensation to be awarded by the Courts/Tribunals should be just and proper compensation in the facts and circumstances of the case. It should neither be a meager amount of compensation, nor a Bonanza.

12. Now this Court shall examine as to whether the compensation awarded by the Tribunal is just and proper compensation in the given facts and circumstances of the case.

13. In a judgment rendered by the Hon'ble Supreme Court in ***Surekha W/o Rajendra Nakhate and others v. Santosh S/o Namdeo Jadhav and others*** passed in ***Civil Appeal No.476 of 2020*** dated ***21.1.2020***, in which the Hon'ble Supreme Court has held as under:-

> *"2. Denial of enhanced compensation on ground that claimants failed to file cross appeal, Court should not take hyper technical approach and ensure that just compensation is awarded to affected person or claimants.*
>
> *3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper*

> *technical approach and ensure that just compensation is awarded to the affected person or the claimants."*

14. On a careful reading of the aforesaid judgment, it is apparent that even in the absence of a cross-appeal or cross-objection, the Court is empowered to award just and proper compensation, keeping in mind the benevolent object of the legislation under the Motor Vehicles Act.

15. In light of aforesaid judgment rendered by the Hon'ble Supreme Court, this Court of the opinion that in order to do complete justice the awarded amount in each of the claim case is required to be enhanced.

16. The Tribunal assessed the income of the deceased at Rs. 3,000/- per month which appears to be proper. Hence, accepting the income of the deceased Rs. 3,000/- per month, the annual income comes to Rs. 36,000/- per annum. As per **National Insurance Company Ltd., Vs. Pranay Sethi and Others, (2017) 16 SCC 680** after adding 40% towards future prospects i.e. Rs. 14,400/-, the annual income comes to Rs. 50,400/-.

**17.** Considering the fact that the deceased was aged about 36 years and the claimants/respondents No. 1 to 5 herein are the wife, children and parents of the deceased so deduction towards personal expenses would be 1/4 (Rs. 12,600/-) of the income and after deduction of the same the annual dependency comes to Rs.

37,800/-. In view of judgment of the Hon'ble Supreme Court in **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** and **Pranay Sethi (supra)** and also considering the age of the deceased, after applying multiplier of 15, the total loss of dependency works out to Rs. 5,67,000/-. The claimants are further entitled for Rs. 18,000/- towards loss of estate (increase of 10% in every three years) and Rs. 18,000/- for funeral expenses (increase of 10% in every three years). As per '**Magma General Insurance Co. Ltd. Vs. Nanu,** reported in **AIR Online 2018 SC 189**, the claimants are further entitled for Rs. (40,000X5+10% +10%) each (with increase of 10% in every three years) i.e. Rs. 2,40,000/- for consortium. Accordingly, the respondent no. 1 to 5/claimants i.e. wife, children and parents of the deceased would become entitled for total compensation of Rs. 8,43,000/- in the following manner:-

| S.No. | Heads | Calculation |
|---|---|---|
| 01 | Towards loss of dependency | Rs. 5,67,000/- |
| 02 | Towards consortium along with with increase of 10% in every three years (40,000X5+10% +10%). | Rs. 2,40,000/- |
| 03 | Towards loss of estate along with increase of 10% in every three years. | Rs. 18,000/- |
| 04 | Towards Funeral Expenses | Rs. 18,000/- |

| | | |
|---|---|---|
| | along with increase of 10% in every three years. | |
| | **Total** | **Rs. 8,43,000**/- |

18. Thus, the total compensation is recomputed as **Rs. 8,43,000/**-. After deducting Rs. 4,34,000/- as awarded by the tribunal, the enhancement would be **Rs. 4,09,000/-.**

19. In light of the judgment of Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. vs. Swaran Singh and Others, AIR 2004 SC 1531,** the appellant / Insurance Company shall pay the enhanced amount of compensation i.e. **Rs.04,09,000/-** alongwith 6 % on the said amount from the date of filing of claim petition till its realization and would be at liberty to recover it from owner /Respondent No.6 of the offending vehicle. The said enhanced amount of compensation shall be paid within a period of 60 days from the date of receipt of copy of this judgment.

20. It is also directed that the enhancement of compensation be intimated to the claimants/Respondent No.1 to 5 at their given address through the concerned District Legal Services Authority ('DLSA'). The Registry is directed to forward a copy of this judgment to the claimants as well as to the concerned DLSA with a further direction to ensure that the claimants may receive the enhanced amount of compensation upon filing suitable proof before the concerned learned Claims Tribunal.

21. The appeal thus partly allowed.

22. Rest of the terms of the impugned award shall remain intact.

Sd/-

**(Amitendra Kishore Prasad)**

**Judge**

Avinash