



2025:CGHC:39900  
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1631 of 2017

Ravi S/o Late Rajeshwar Prasad Aged About 21 Years Caste - Uraon  
R/o Village Jagannathpur Police Out Post Khadgawakala Tahsil And  
Police Station Pratappur District Surajpur Chhattisgarh Owner of The  
Offending Vehicle Bearing Registration No. C G 15 C U 0837

... Appellant

versus

1 - Meena Devi Rajwade W/o Shri Shivcharan Rajwade Aged About 39  
Years R/o Village Khadgawakala , Majhapara, Tahsil Pratappur, District  
Surajpur Chhattisgarh.

2 - Shivcharan Rajwade S/o Ramawtar Rajwade Aged About 43 Years  
R/o Village Khadgawakala, Majhapara, Tahsil Pratappur, District  
Surajpur Chhattisgarh.

3 - Kamala Rajwade D/o Shri Shivcharan Rajwade Aged About 15 Years  
Minor, Through The Natural Guardian Mother Respondent No. 1  
Namely Meena Devi Rajwade , R/o Village Khadgawakala , Majhapara,  
Tahsil Pratappur, District Surajpur Chhattisgarh.

... Respondents

(Cause-title taken from Case Information System)

|                 |                                                                             |
|-----------------|-----------------------------------------------------------------------------|
| For Appellant   | : Mr. V.K. Pandey, Advocate                                                 |
| For Respondents | : Mr. K.K. Prajapati, Advocate on behalf of Mr.<br>D.N. Prajapati, Advocate |

Hon’ble Shri Amitendra Kishore Prasad, Judge  
Judgment on Board

08.08.2025

1. Challenge in this appeal is to the award dated 30.03.2017 passed  
by the learned Additional Motor Accident Claims Tribunal,  
Pratappur District Surajpur, (C.G.) (hereinafter referred to as

'Claims Tribunal') in Claim Case No.33/2016 whereby learned Claims Tribunal allowed claim application in part of the claimants.

2. The claimants have filed cross-appeal under Order 41 Rule 22 of the Civil Procedure Code, 1908 for enhancement of amount of compensation.
3. Brief facts of this appeal, in a nutshell, are that, on 23.03.2016 at about 7.00 PM, Naresh Kumar Rajwade (since deceased) along with his friend Ramesh Bargah was going towards Grocery shop of Bhuneshwar Rajwade on his motorcycle bearing registration No.CG-15-CH-9017. When he reached near grocery shop and while standing his motorcycle, another motorcycle bearing registration No.CG-15-CU-0837 (hereinafter referred to as "offending vehicle") driven by Ravi rashly and negligently, dashed the motorcycle of Naresh, due to which he suffered grievous injuries over his person. He was taken to the Hospital at Ambikapur, but on the way, he died.
4. The claimants being parents and sister of deceased have filed a claim petition claiming Rs.34,90,000/- as compensation under various heads pleading therein that at the time of accident, deceased was aged about 20 years and earning Rs.500/- per day while doing the work of cycle repairing.
5. The appellant/non-applicant, while filing the written reply, has categorically denied the entire claim and submitted that the claim petition is not maintainable in law. It has been specifically

contended that the deceased was not have any cycle repairing shop nor was he earning a daily income of Rs.500/- as alleged by the claimants. No registration certificate or documentary proof of such shop has been produced, and in the absence of any evidence, it is clear that the deceased was not engaged in any such business. The claim regarding his income is thus wholly fabricated and exaggerated with the sole intention of claiming excessive compensation. It has further been pleaded that the deceased himself was solely responsible for the accident. On the date of the incident, while driving the motorcycle in a rash and negligent manner, the deceased lost control, fell on the road, and sustained fatal injuries. The accident occurred entirely due to his own carelessness, and therefore, no liability can be fastened upon the non-applicant. It has also been pointed out that the deceased did not possess a valid driving licence at the relevant time, and therefore, he was not legally entitled to drive the motorcycle. His unauthorized and negligent act was the direct cause of the accident. The non-applicant has further submitted that the claimants have failed to implead the owner of the motorcycle as well as the insurance company, who are necessary parties to the proceedings. In the absence of these parties, the claim petition itself is defective and not maintainable. Since the accident occurred solely due to the fault and negligence of the deceased, and in view of the false and unsubstantiated claims made by the

claimants, they are not entitled to receive any amount of compensation.

6. On appreciation of pleadings, oral and documentary evidence brought on record by the respective parties, Claims Tribunal held that the deceased was contributed to the accident to the extent of 40% and driver-cum-owner of the offending vehicle was held liable for contributory negligence to the extent of 60% and awarded a sum of Rs.2,75,400/- to the claimants along with interest @ 9% per annum from the date of award till its realization and fastened the liability to pay the amount of compensation upon the owner of the offending vehicle.
7. Learned counsel for the appellant/owner submits that the impugned award passed by the learned Claims Tribunal is contrary to the facts and evidence available on record and hence not sustainable in the eyes of law. It is submitted that the Claims Tribunal has erred in awarding an excessively high amount of compensation in favour of the claimants without proper appreciation of evidence. The evidence of Shivcharan Rajwade (NAW-1) and Bhuvneshwar Prasad Rajwade (NAW-2) clearly establishes that the deceased was driving his motorcycle without possessing any valid and effective driving licence. The said witnesses have not identified the appellant as the person driving the motorcycle from the opposite direction, nor was the appellant named in the FIR or in the *Merg* intimation. Even the eye-witness

has categorically stated that the accident took place when both vehicles were approaching from opposite directions. Despite such clear contradictions, the Claims Tribunal has wrongly fixed 60% contributory negligence upon the appellant, which is wholly unjust and liable to be set aside. It is further submitted that the accident occurred solely due to the rash and negligent driving of the deceased himself. The claim petition, therefore, deserved to be dismissed, but the Tribunal, without considering this vital aspect, has wrongly awarded compensation in favour of the claimants. Moreover, the claim petition itself suffers from non-joinder of necessary parties, as the claimants neither impleaded the owner of the motorcycle being driven by the deceased nor the insurance company of the said vehicle. In the absence of these necessary parties, the petition is not maintainable in law. Learned counsel further submits that even if for the sake of argument it is assumed that both sides were negligent, the Tribunal ought to have assessed contributory negligence in equal proportion, i.e., 50:50, instead of wrongly fixing the liability in the ratio of 40:60 between the deceased and the appellant. Such an assessment is arbitrary and contrary to settled legal principles. As such, the appeal be allowed and the impugned award be quashed.

8. On the other hand, learned counsel appearing for the claimants submits that the learned Claims Tribunal has erred in awarding a meagre amount of compensation, which is not just and proper. It is submitted that the Tribunal has failed to award any compensation

towards future prospects, and further erred in assessing the monthly income of the deceased at only Rs.3,000/-, which is contrary to the evidence and settled principles of law. It is also contended that the Tribunal has wrongly deducted 50% towards personal and living expenses of the deceased, whereas there were three dependents, and therefore, the proper deduction ought to have been one-third (1/3rd). It has further been urged that the present case is one of composite negligence on the part of the vehicles involved, but the Tribunal has erroneously recorded a finding of contributory negligence against the deceased, which is unsustainable. As such, the cross-appeal filed by the claimants be allowed and the amount of compensation be suitably enhanced.

9. I have heard learned counsel for the parties and perused the record of the claim case carefully.
10. This Court shall first deal with the appeal filed by the owner of the offending vehicle.
11. The learned Claims Tribunal, while considering Issue No.1, has dealt with the oral as well as documentary evidence in paragraphs 7 to 11 of the judgment and after appreciating the testimonies of the witnesses, particularly Shivcharan Rajwade (NAW-1) and eyewitness Bhuneshwar Prasad Rajwade (NAW-2) has come to the conclusion that the deceased, Naresh Kumar Rajwade, was himself driving the motorcycle at the time of the accident and that he did not possess any valid and effective driving licence. The

Tribunal further took note of the admission made by the eyewitness that though he had seen the accident, he could not identify the driver of the motorcycle coming from the opposite direction, and therefore the name of the non-applicant could not be mentioned in the First Information Report or in the Merg Intimation. At the same time, the Tribunal also took into account the documentary evidence filed by the claimants, i.e. the First Information Report (Ex. P-1), the inquest, panchnama, site map, postmortem report, and other connected documents, which were duly exhibited. The Tribunal observed that though the FIR placed on record was not a police-attested copy, it had been exhibited in the case and no further objection was raised by the non-applicant, nor was any step taken by him to summon the original record or to challenge its authenticity. The Tribunal further noticed that the non-applicant had not suggested to the witnesses that no criminal case had been registered against him, or that he was not driving the motorcycle involved in the accident, as such, the Claims Tribunal held that the registration of a criminal case against the non-applicant in relation to the accident stood established and his involvement could not be denied. On such appreciation of the evidence, both oral and documentary, the Tribunal concluded that the accident was the result of a head-on collision between the motorcycle driven by the deceased and the motorcycle driven by the non-applicant. Since the deceased himself was driving the motorcycle without holding a valid licence and was negligent in his

manner of driving, the Tribunal held him to be partly responsible for the accident. Accordingly, the Tribunal apportioned liability between the parties and held that the deceased contributed 40% towards the cause of the accident, whereas the non-applicant was responsible to the extent of 60%. Thus, the Tribunal recorded a finding that the accident was a case of contributory negligence and apportioned liability in the ratio of 40:60 between the deceased and the non-applicant.

12. Upon due consideration of the evidence on record and the reasoning assigned by the learned Claims Tribunal in paragraphs 7 to 11, this Court finds that the said finding with respect to the manner of accident and the apportionment of liability is just, proper, and based on sound appreciation of evidence. No illegality or perversity has been pointed out warranting interference by this Court. Accordingly, the appeal filed by the owner fails and is hereby **dismissed**.
13. Now, this Court shall deal with the cross-appeal filed by the claimants.
14. Before the learned Claims Tribunal, claimants have pleaded income of deceased to Rs.500/- per day while doing the work of cycle repairing, but has not produced any evidence with respect to place of work of deceased or any documentary evidence with respect to salary or income of deceased. The claimants have failed to prove income as pleaded in their claim application,

therefore, in the facts and circumstances of case, income of deceased is to be assessed on notional basis. The date of accident was 23.03.2016, therefore, looking to minimum wages rate prevailing in the Districts and State, it will be proper to hold engagement of deceased in labour work and his income to be assessed to Rs.6,302/- per month.

15. The legal position now stands settled by virtue of the law declared by the Apex Court in ***Sarla Verma v. Delhi Transportation Corporation, (2009) 6 SCC 121***. It stands affirmed by the Constitution Bench of the Apex Court in ***National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157***,(supra). Even though, it has been observed by the Claims Tribunal that the deceased was 20 years of age. In the instant case, since the accident occurred was in the year 2016, this Court has assessed the income of the deceased as Rs.6,302/- per month i.e. Rs.75,624/- per annum. Going by the rulings rendered by the Apex Court as cited above, in the case of persons of less than 40 years of age without fixed income, 40% of the income has to be added for fixing the future prospects (Rs.30,250/-), which comes to Rs.1,05,874/- per annum. As the deceased was bachelor, the Claims Tribunal has rightly deducted 50% towards personal and living expenses, as such after deducting 50%, annual income of deceased comes to Rs.52,937/-. After applying the multiplier of 18, the loss of income of deceased comes to Rs.9,52,866/-.

16. The scope of 'consortium' has been subsequently explained by the Apex Court in ***Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram & Others, (2018) 18 SCC 130***. It can be of three types; **Parental consortium** (payable to children because of the death of parents); **Spousal consortium** (payable to the surviving spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). This being the position, the claimants are entitled to get a sum of Rs.1,20,000/- towards loss of consortium. Further, a sum of Rs.15,000/- is payable towards funeral expenses in view of the law declared in ***Pranay Sethi*** (supra). As per the decision rendered in ***Pranay Sethi*** (supra), the claimants are also entitled to get a sum of Rs.15,000/- towards loss of estate. Further, 10% enhancement in every three years is also required to be given in respect of loss of estate, funeral expenses and loss of consortium in view of the judgment rendered by Hon'ble Supreme Court in the matter of ***United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur, (2020) 11 SCC 1***.

17. On the basis of above recalculation, the claimants are entitled for compensation in the following manner:-

| Sl. No. | Head                                      | Calculation                     | Awarded amount |
|---------|-------------------------------------------|---------------------------------|----------------|
| 1.      | Income of deceased @ Rs.6,302/- per month | Rs.75,624/- per annum           |                |
| 2.      | 40% of (1) above to be added as future    | 75,624 + 30,250 = Rs.1,05,874/- |                |

|    |                                                                                 |                                                                          |                      |
|----|---------------------------------------------------------------------------------|--------------------------------------------------------------------------|----------------------|
|    | prospects                                                                       |                                                                          |                      |
| 3. | 50% of (2) deducted as personal expenses of the deceased                        | $1,05,874 / 2 =$<br>Rs.52,937/-                                          |                      |
| 4. | Compensation after multiplier of 18 applied                                     | $52,937 \times 18$                                                       | Rs.9,52,866          |
| 5. | Towards loss of estate                                                          | $15,000 + 3,000$ with increase of 10% in every three years               | Rs.18,000/-          |
| 6. | Towards loss of consortium to all the three claimants @ Rs. 40,000/-            | $40,000 + 8,000 =$<br>48,000/- with increase of 10% in every three years | Rs.1,44,000/-        |
| 7. | Funeral Expenses                                                                | $15,000 + 3,000$ with increase of 10% in every three years               | Rs.18,000/-          |
| 8. | Compensation                                                                    |                                                                          | Rs.11,32,866/-       |
| 9. | After deducting 40% towards contributory negligence on the part of the deceased | $11,32,866 \times 40\%$<br>$= 4,53,146$<br>(11,32,866 – 4,53,146)        | Rs.6,79,720/-        |
|    |                                                                                 | <b>Total Compensation Awarded</b>                                        | <b>Rs.6,79,720/-</b> |

**18.** In the said circumstance, the total compensation comes to **Rs.6,79,720/-**. After deducting Rs.2,75,400/- as awarded by the Claims Tribunal, the enhancement would be **Rs.4,04,320/-**.

**19.** In the result, the cross-appeal filed by the claimants is **allowed in part**. The impugned award is modified to the extent indicated herein-above. The claimants shall be entitled to **Rs.4,04,320/-** in

addition to what is already awarded by the Claims Tribunal. The enhanced amount will carry interest @ 9% per annum from the date of enhancement of the award till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

- 20.** The appellant/owner of the offending vehicle is directed to pay the enhanced amount of compensation to the claimants as modified by this Court within a period of 60 days from the date of production of certified copy of this judgment.
- 21.** Record of the concerned Motor Accident Claims Tribunal be sent.

**Sd/-**

**(Amitendra Kishore Prasad)**  
**Judge**

Yogesh