



AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1608 of 2016Judgment Reserved on : 28/02/2026Judgment Delivered on :20/03/2026

National Insurance Company Limited, Bhootani Complex, G.E.Road, Power House Bhilai, Distt. Durg, Through- Divisional Manager, Divisional Office, Aakashganga, Supela, Bhilai, Tahsil and District Durg, ChhattisgarhNon-Applicant No.3,

... Appellant**Versus**

1 - Smt. Durga Yadav Wd/o Late Ajay Kumar Yadav, Aged About 25 Years,
2 - Ku. Kalpana Yadav, D/o Late Ajay Kumar Yadav, Aged About 3 Years,
3 - Ku. Geetanjali, D/o Late Ajay Kumar Yadav, Aged About 2 Years,
4 - Mohan Lal Yadav S/o Late Kunwar Singh Yadav, Aged About 55 Years,
5 - Smt. Pramila Yadav W/o Mohan Lal Yadav, Aged About 50 Years,
6 - Chhannu Yadav S/o Late Ajay Kumar Yadav, Aged About 7 Years,
Respondent Nos.2, 3 & 6 are minor through their mother Smt. Durga Yadav (Respondent No.1)

All are R/o Village Hinganadih, P.O. Ahiwara, P.S. Nandni, Tah. Dhamdha, Distt. Durg, Chhattisgarh

7 - Nandlal Sahu S/o Balaram Sahu, Aged About 38 Years, R/o Village Kapsada, P.S. Kumhari, District Durg, Chhattisgarh, Driver/Non-Applicant No.1,

8 - Tribhuwan Pande S/o Jaikishan Pande, R/o Quarter No. 137/ F, Risali Sector, Bhilai, Tah. and Distt. Durg, Chhattisgarh, Owner/Non-Applicant No.2,

... Respondents**AND**

**MAC No. 1609 of 2016**

National Insurance Company Limited, Bhootani Complex, G.E.Road, Power House Bhilai, Distt. Durg, Through- Divisional Manager, Divisional Office, Aakashganga, Supela, Bhilai, Tahsil and District Durg, ChhattisgarhNon-Applicant No.3,

Versus

1 - Santosh Yadav, S/o Late Shankar Yadav, Aged About 42 Years,

2 - Smt. Tijan Bai Yadav, W/o Santosh Yadav, Aged About 40 Years,

3 - Ku. Laxmi Yadav D/o Santosh Yadav, Aged About 20 Years,

4 - Ku. Pratibha Yadav D/o Santosh Yadav, Aged About 14 Years,

5 - Ku. Seema Yadav D/o Santosh Yadav, Aged About 14 Years,

Respondent Nos. 4 & 5 are minor through their Father Santosh Yadav Respondent No.1,

All are R/o Village Hinganadih, P.O. Ahiwara, P.S. Nandni, Tah. Dhamdha, Distt. Durg, ChhattisgarhApplicant No.5,

6 - Nandlal Sahu S/o Balaram Sahu, Aged About 38 Years R/o Village Kapsada, P.S. Kumhari, District Durg, Chhattisgarh Driver/Non-Applicant No.1,

7 - Tribhuwan Pande S/o Jaikishan Pande, R/o Quarter No. 137/ F, Risali Sector, Bhilai, Tah. And Distt. Durg, Chhattisgarh Owner/Non-Applicant No.2,

--- Respondents

AND**MAC No. 379 of 2017**

1 - Santosh Yadav, S/o Late Shankar Yadav, Aged About 42 Years,

2 - Smt. Tijan Bai W/o Santosh Yadav, Aged About 40 Years,

3 - Ku. Laxmi Yadav D/o Santosh Yadav, Aged About 20 Years

4 - Ku. Pratibha Yadav D/o Santosh Yadav, Aged About 14 Years,

5 - Ku. Seema Yadav D/o Santosh Yadav, Aged About 14 Years,

Appellant Nos.4 & 5 are minor through their Father Santosh Yadav (Appellant No.1)

All are R/o Village Hinganadih, Post Ahiwara, Police Station Nandini, Tehsil Dhamdha and District Durg, ChhattisgarhClaimants,

---Appellants

Versus



- 1 - Nandlal Sahu S/o Balaram Sahu, Aged About 28 Years, R/o Village Kapasda, Police Station Kumhari, District Durg, ChhattisgarhDriver of Vehicle 407 No. C.G.08-B-1403,
- 2 - Tribhuvan Pandey S/o Jaikishan Pandey, R/o Quarter No. 137/ F, Risali Sector Bhilai, Tehsil And District Durg, ChhattisgarhOwner of Vehicle 407 No. C.G.08-B-1403,
- 3 - National Insurance Company Limited, Bhootani Complex, G.E.Road, Power House Bhilai, District Durg, Chhattisgarh, Through Divisional Manager, Divisional Office, Aakashganga, Supela, Bhilai, Tehsil And District Durg, ChhattisgarhInsurer of Vehicle 407 No. C.G.08-B-1403,

--- Respondents

AND

MAC No. 380 of 2017

- 1 - Smt. Durga Yadav W/o Late Ajay Kumar Yadav, Aged About 25 Years,
 - 2 - Ku. Kalpana Yadav D/o Ajay Kumar Yadav, Aged About 3 Years,
 - 3 - Ku. Geetanjali D/o Ajay Kumar Yadav, Aged About 2 Years,
 - 4 - Mohan Lal Yadav S/o Late Kunwar Singh Yadav, Aged About 55 Years,
 - 5 - Smt. Pramila Yadav W/o Mohan Lal Yadav, Aged About 50 Years,
 - 6 - Channu Yadav S/o Ajay Kumar Yadav, Aged About 7 Months, Minor
- Appellant Nos.2, 3 & 6 are minor through their Mother Smt. Durga Yadav (Appellant No.1),
- All are R/o Village Hinganadih, Post Ahiwara, Police Station Nandini, Tehsil Dhamdha and District Durg, ChhattisgarhClaimants

---Appellants

Versus

- 1 - Nandlal Sahu, S/o Balaram Sahu, Aged About 28 Years, R/o Village Kapasda, Police Station Kumhari, District Durg, ChhattisgarhDriver of Vehicle 407 No. C.G.08-B-1403,
- 2 - Tribhuvan Pandey, S/o Jaikishan Pandey, R/o Quarter No. 137/ F, Risali Sector Bhilai, Tehsil and District Durg, ChhattisgarhOwner of Vehicle 407 No. C.G.08-B-1403,
- 3 - National Insurance Company Limited, Bhootani Complex, G.E.Road, Power House Bhilai, District Durg, Chhattisgarh, Through Divisional Manager, Divisional Office, Aakashganga, Supela, Bhilai, Tehsil and District Durg, ChhattisgarhInsurer of Vehicle 407 No. C.G.08-B-1403,

--- Respondents



For Appellants (in MAC No.1608/2016 & 1609/2016)	:	Mr. Dashrath Gupta along with Mr. Pravesh Sahu, Advocates
For Respondent No.1 to to 6 (in MAC No.1608/2016) and Respondent No.1 to 5 (in MAC No.1609/2016)	:	Mr. Ashish Pandey, Advocate on behalf of Mr. Shokie Yadav, Advocate
For Respondent No.7 & 8 (in MAC No.1608/2016) and Respondent No.6 to 7 (in MAC No.1609/2016).	:	None

Hon'ble Shri Justice Radhakishan Agrawal,
CAV Judgment

1. As above captioned appeals arise out of same accident that occurred on 11.12.2013, they are being heard and disposed of by this common judgment.
2. MAC No. 379/2017 and MAC No. 380/2017 have been preferred by the appellants/claimants seeking enhancement of compensation against the award dated 31.08.2016 passed by the 2nd Additional Motor Accident Claims Tribunal, District Durg, Chhattisgarh in Claim Case No. 76/2015 and Claim Case No. 77/2015, whereby total compensation of Rs. 11,97,648/- and Rs. 8,14,000/- respectively was awarded for the death of Ajay Kumar Yadav & Shyamlal Yadav, along with interest @ 6% per annum from the date of application till realization, fastening the liability upon non-applicant No. 3 – National Insurance Company Limited.

Likewise, MAC No. 1608/2016 and MAC No. 1609/2016 have been preferred by the appellant/Insurance Company challenging the validity and legality of the impugned award with regard to the fastening of liability to pay the compensation upon it.



3. As per averments made in the claim petition, on 11.12.2013, the deceased Ajay Kumar Yadav (MAC No.380/2017) and Shyamlal Yadav (MAC No.379/2017) had gone separately on their respective bicycles to distribute milk. At about 7:45 p.m. to 8:00 p.m., while they were returning to their homes on their bicycles, proceeding on the left side of the road, on the Ahivara–Kumhari Road, the vehicle - 407 bearing registration No. CG-08-B-1403 (hereinafter referred to as “the offending vehicle”), driven by Non-applicant No. 01/Nandlal Sahu, came at a high speed. It is alleged that the said vehicle was being driven in a rash and negligent manner and dashed the bicycles of the deceased Ajay Kumar Yadav and Shyamlal Yadav, and in that event, both sustained grievous and fatal injuries and fell on the road. They were immediately taken to the District Hospital, Durg for medical treatment. However, during the course of treatment, the attending doctors declared Ajay Kumar Yadav and Shyamlal Yadav dead. At the time of accident, the offending vehicle was owned by non-applicant No.2 – Tribhuvan Pandey and insured with non-applicant No.3 – National Insurance Company Limited. As per the claim petition, deceased Ajay Kumar Yadav was a mason and dairy worker, aged about 28 years and was earning Rs.7,500/- per month, whereas, deceased Shyamlal Yadav was also a mason, aged about 17 years and was earning Rs.6,000/- per month.
4. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.22,61,600/- (in case of deceased Ajay Kumar Yadav) and Rs.21,24,000/- (in case of deceased Shyamlal Yadav), the Tribunal, considering the evidence led by the parties, passed an award as mentioned in paragraph 2 of this judgment. Being aggrieved with the impugned award, the claimants



have filed separate appeals for enhancement. Similarly, non-applicant No.3/insurance company has also filed these appeals against the impugned award with regard to fastening of liability upon it.

5. Learned counsel for the appellants/claimants submits that the learned Tribunal has wrongly assessed the monthly income of the deceased persons at Rs.4,500/- per month. The deceased Ajay Kumar Yadav was a mason and a dairy worker, and was earning Rs.7,500/- per month, whereas, deceased Shyamlal Yadav was also a mason, and was earning Rs.6,000/- per month. As such, looking to the nature of their work, their monthly income deserves to be increased suitably. He further submitted that the amount awarded towards the conventional heads is also on lower side, which needs to be enhanced suitably. Reliance has been placed on the decisions of Hon'ble Supreme Court in the matters of *National Insurance Company Limited vs Pranay Sethi and others*, (2017) 16 SCC 680 & *Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others* reported in (2018) 18 SCC 130.
6. Learned counsel for respondent No.3/Insurance Company submitted that, at the time of the accident, the offending vehicle did not possess a valid fitness certificate and was, therefore, being plied in violation of the terms and conditions of the insurance policy. Consequently, the finding recorded by the learned Claims Tribunal in paragraph 27 of the impugned award holding that the Insurance Company cannot be exonerated from its statutory liability merely on the ground that the offending vehicle, allegedly lacked a valid fitness certificate, is stated to be erroneous. Counsel additionally submitted that since the deceased persons were below 40 years of age and were self-employed, the



addition towards future prospects ought to be 40% instead of 50% as awarded by the Tribunal. In support of his contentions, reliance has been placed on the judgments of the Hon'ble Supreme Court in *Smt. Sarla Verma and Others v. Delhi Transport Corporation and Another*, (2009) 6 SCC 121; *National Insurance Co. Ltd. v. Pranay Sethi* (supra) ; and the decision of the Division Bench of this Court in *Aadesh and Another v. Smt. Satarupa Bai Yadav and Others* dated 19.11.2020.

7. Heard learned counsel for the parties and perused the materials available on record.
8. To deal with the contentions advanced by learned counsel for the parties, it would be apt to discuss the evidence available on record. Firstly, the question for consideration would be whether on the date of accident, the driver/owner of the offending vehicle had possessed the valid and effective fitness certificate?
9. It is not in dispute that the deceased, namely Ajay Kumar Yadav and Shyamlal Yadav, succumbed to the injuries sustained in the motor vehicular accident caused due to the rash and negligent driving of Non-Applicant No.1, the driver of the offending vehicle, which was owned by Non-Applicant No.2, Tribhuvan Pandey. With regard to the fitness certificate of the offending vehicle, NAW-3(1), Hitesh Rao, Assistant Grade-III, Additional RTO, Durg, was examined. He deposed that he had produced the computerized record of the said vehicle obtained from the RTO Office, Durg, which was exhibited as Ex.D-1 and Ex.D-2. According to his statement, on the date of the incident, i.e., 11.12.2013, the offending vehicle did not possess a valid fitness certificate. He stated that the fitness certificate was valid from 15.11.2011 to



14.11.2012, thereafter from 07.12.2012 to 06.12.2013, and again from 16.12.2013 to 15.12.2014.

A perusal of Ex.D-1 and Ex.D-2 reveals that the fitness certificate of the offending vehicle was valid from 15.11.2011 to 14.11.2012, thereafter from 07.12.2012 to 06.12.2013, and subsequently from 16.12.2013 to 15.12.2014, whereas the alleged accident occurred on 11.12.2013. From the exhibited documents, it is not evident that the offending vehicle possessed a valid and effective fitness certificate on the date of the accident.

- 10.** That apart, when there is specific averment on the part of insurance company of offending vehicle that on the date of accident, offending vehicle was not having valid fitness certificate, the question arise for consideration of this Court is whether on the ground of absence of fitness certificate Insurance Company can be absolved from its liability.
- 11.** Requirement of certificate of fitness is envisaged under Section 56 of the Act of Motor Vehicles Act, 1988. Section 56 (1) is reproduced below for ready reference :-

“Subject to the provisions of sections 59 and 60, a transport vehicle shall not be deemed to be validly registered for the purposes of section 39, unless it carries a certificate of fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority, or by an authorized testing station mentioned in sub-section (2), to the effect that the vehicle complies for the time being with all the requirements of this Act and the rules made thereunder:

Provided that where the prescribed authority or the “authorized testing station” refuses to issue such certificate, it



shall supply the owner of the vehicle with its reasons in writing for such refusal.”

12. Perusal of above provision would show that unless and until there is valid certificate of fitness, transport vehicle shall not be deemed to be validly registered. Requirement of certificate of fitness is mandatory and fundamental for its registration. Section 39 of the Act of 1988 envisages for registration of vehicle, which reads as under :-

“39. **Necessity for registration.** —No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner :

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.”

13. It prescribes that no person shall drive any motor vehicle in public or other places unless vehicle is registered. Conjoint reading of provisions of Section 39 and 56 of the Act of 1988 makes it clear that if the transport vehicle is plied on public road or any place without certificate of fitness will be in breach of policy condition and such breach will be a fundamental breach.

14. This issue has been considered by the five judges Bench of Kerala High Court in case of **Pareed Pillai vs. Oriental Insurance Company Co. Ltd** reported in **AIR 2019 Kerala 9** and held thus :-



“17. The stipulations under the above provisions clearly substantiate the importance and necessity to have a valid Fitness Certificate to the transport vehicle at all times. The above prescription converges on the point that Certificate of Registration, existence of valid Permit and availability of Fitness Certificate, all throughout, are closely interlinked in the case of a transport vehicle and one requirement cannot be segregated from the other. The transport vehicle should be completely fit and road worthy, to be plied on the road, which otherwise may cause threat to the lives and limbs of passengers and the general public, apart from damage to property. Only if the transport vehicle is having valid Fitness Certificate, would the necessary Permit be issued in terms of Section 66 of the Act and by virtue of the mandate under Section 56 of the Act, no transport vehicle without Fitness Certificate will be deemed as a validly registered vehicle for the purpose of Section 39 of the Act, which stipulates that nobody shall drive or cause the motor vehicle to be driven without valid registration in public place or such other place, as the case may be. These requirements are quite 'fundamental' in nature; unlike a case where a transport vehicle carrying more passengers than the permitted capacity or a goods carriage carrying excess quantity of goods than the permitted extent or a case where a transport vehicle was plying through a deviated route than the one shown in the route permit which instances could rather be branded as 'technical violations'. In other words, when a transport vehicle is not having a Fitness Certificate, it will be deemed as having no Certificate of Registration and when such vehicle is not having Permit or Fitness Certificate, nobody can drive such vehicle and no owner can permit the use of any such vehicle compromising with the lives, limbs, properties of the passengers/general public. Obviously, since the safety of passengers and general public was of serious concern and consideration for the law makers, appropriate and adequate measures were taken by incorporating relevant provisions in



the Statute, also pointing out the circumstances which would constitute offence; providing adequate penalty. This being the position, such lapse, if any, can only be regarded as a fundamental breach and not a technical breach and any interpretation to the contrary, will only negate the intention of the law makers.”

15. In view of very specific aforementioned provisions of the Act of 1988 and above cited judgment, it has been held that, absence of fitness certificate for the offending vehicle is fundamental breach of policy condition.
16. In light of the aforementioned evidence, coupled with the decision of this Court in the cases referred to above, I am of the view that there has been a breach of the policy conditions at the time of the accident. Therefore, the owner and driver of the offending vehicle are liable to pay compensation to the claimants, and the appellant – the insurance company is exonerated from its liability on the ground that, on the date of the accident, the offending vehicle did not have a valid fitness certificate.
17. With regard to the payment of compensation, considering the facts and circumstances of the case, and the fact that the deceased persons were third parties, hence, taking support of judgment passed by Hon'ble Supreme Court in case of **Amrit Paul Singh and another v. Tata AIG General Insurance Company Limited and others** reported in **(2018) 7 SCC 558**, it would be appropriate to direct the Insurance Company to first deposit the entire amount of compensation alongwith interest and thereafter, recover the same from the owner and driver of offending vehicle in accordance with law.



18. So far as appeals filed by appellants/claimants for enhancement of amount of compensation is concerned, claimants (in MAC No.380/2017) have very specially pleaded in their claim petition that on the date of accident, deceased Ajay Kumar Yadav was aged about 28 years and working as a mason and dairy worker thereby earning Rs.7,500/- per month, but they failed to produce any admissible piece of evidence in this regard. In absence thereof, the Tribunal has assessed income of deceased as Rs.4,500/- per month.

Similarly, the claimants (in MAC No.379/2017) have very specially pleaded in their claim petition that on the date of accident, deceased Shyamlal Yadav was aged about 17 years and working as mason as well as contractor, thereby earning Rs.6,000/- per month, but they failed to produce any admissible piece of evidence in this regard. In absence thereof, the Tribunal has assessed income of deceased as Rs.4,500/- per month. The approach of the Tribunal in assessing the monthly income of the deceased persons at Rs. 4,500/- is not just and proper. Therefore, considering the Minimum Wages provisions and the nature of work of the deceased persons, I propose to recompute the monthly income of the deceased persons at Rs.5,163/- i.e. Rs.61,956/- per annum respectively.

19. Moreover, the Tribunal has erred in adding 50% amount towards future prospects of the deceased persons, which is not in accordance with the decision of the Hon'ble Supreme Court in the matter of *Pranay Sethi* (supra) wherein it was prescribed that for the age below 40 years, the applicable loss of future prospects would be 40% for the self-employed persons. Therefore, looking to the age of the deceased Ajay Kumar Yadav i.e. 30 years, and deceased Shyamlal Yadav i.e. 17 years, as



considered by the Tribunal, the applicable percentage towards their future prospects would be 40% instead of 50%. So far as application of multiplier is concerned, there is no dispute on it. Further, taking the guidance from the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma* (supra), *Pranay Sethi* (supra) & *Magma General Insurance Co. Ltd.* (supra), this Court recomputes the compensation in the following manner:-

MAC No.380 of 2017:-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased Ajay Kumar Yadav @ Rs.5,163/- per month	Rs.61,956/- per annum
02.	40% of (1) above to be added towards future prospects.	Rs.24,782/- Rs.61,956 + Rs.24,782 = Rs.86,730/-
03.	¼ deduction towards personal and living expenses of the deceased	Rs.21,604/- Rs.86,730 – Rs.21,604 = Rs.65,126/-
04.	Multiplier of 17 to be applied	Rs.65,126 x 17 = Rs.11,07,142/-
05.	Towards Conventional Heads (loss of estate, funeral expenses and loss of consortium)	Rs.2,70,000/-
	Total Compensation	Rs.13,77,142/-

20. Since the Tribunal has already awarded Rs.11,97,648/-, after deducting the same from Rs.13,77,142/-, the appellants/claimants (in MAC No.380/2017) are entitled for additional compensation of **Rs.1,79,494/-**,



which shall carry interest as awarded by the Tribunal. However, the ratio of disbursement made by the Tribunal in the impugned award shall remain intact.

MAC No.379/2017:-

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased Shyamlal Yadav @ Rs.5,163/- per month	Rs.61,956/- per annum
02.	40% of (1) above to be added towards future prospects.	Rs.24,782/- Rs.61,956 + Rs.24,782 = Rs.86,730/-
03.	1/2 deduction towards personal and living expenses of the deceased	Rs.43,365/- Rs.86,730 – Rs.43,365 = Rs.43,365/-
04.	Multiplier of 18 to be applied	Rs.43,365 x 18 = Rs.7,80,570/-
05.	Towards Conventional Heads (loss of estate, funeral expenses and loss of consortium)	Rs.2,30,000/-
	Total Compensation	Rs.10,10,570/-

21. Since the Tribunal has already awarded Rs.8,14,000/-, after deducting the same from Rs.10,10,570/-, the appellants/claimants (in MAC No.379/2017) are entitled for additional compensation of **Rs.1,96,570/-**, which shall carry interest as awarded by the Tribunal. It is directed that the Insurance Company shall first deposit the entire amount of compensation alongwith interest and thereafter, recover the same from owner and driver of offending vehicle in accordance with law. However,



the ratio of disbursement made by the Tribunal in the impugned award shall remain intact.

22. In the result, all the above captioned appeals are allowed in part with the modification in the impugned award to the above extent.

Sd/-

(Radhakishan Agrawal)
JUDGE

Prakash