

**NAFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****MAC No. 2403 of 2024**

1 - Divisional Manager, The New India Insurance Company Limited
Divisional Office Sada Complex, Transport Nagar, Korba, Chhattisgarh.
(Insurer Truck No. C.G. 13 / A.H./ 2982)

--- Appellant**versus**

1 - Sabiya Parveen W/o Late Neyajuddin Aged About 32 Years
Resident House No. Number 118, Village - Telaaedhar, Post -
Battaikala, Thana - Sitapur, District Surguja, Chhattisgarh. (Claimant)

2 - Mohd. Moienuddin Khan S/o Late Neyajuddin Aged About 10 Years
Minor, Through Natural Guardian Mother Sabiya Parveen (Respondent
No. 1) W/o Late Neyajuddin, Resident House No. Number 118, Village -
Telaaedhar, Post - Battaikala, Thana - Sitapur, District Surguja,
Chhattisgarh. (Claimant)

3 - Mohseen Khan S/o Late Neyajuddin Aged About 8 Years Minor,
Through Natural Guardian Mother Sabiya Parveen (Respondent No. 1)
W/o Late Neyajuddin, Resident House No. Number 118, Village -
Telaaedhar, Post - Battaikala, Thana - Sitapur, District Surguja,
Chhattisgarh. (Claimant)



4 - Naajma Begum W/o Nejamuddin Aged About 57 Years Resident House No. Number 118, Village - Telaaedhar, Post - Battaikala, Thana - Sitapur, District Surguja, Chhattisgarh. (Claimant)

5 - Nejamuddin S/o Mohiuddin Aged About 62 Years Resident House No. Number 118, Village - Telaaedhar, Post - Battaikala, Thana - Sitapur, District Surguja, Chhattisgarh. (Claimant)

6 - Ulsan Ekka S/o Shilas Ekka Aged About 35 Years Resident Saraskombo, Thana Bagicha, District Jashpur, Chhattisgarh. (Vehicle Driver)

7 - Chetan Kumar Singhaniya S/o Pradeep Singhaniya Flat No. - 10 S.G. Height Gajaanandpuram Raigarh, District - Raigarh Chhattisgarh. (Vehicle Owner)

--- **Respondents**

MAC No. 2407 of 2024

1 - Sabiya Parveen W/o Late Neyajuddin Aged About 32 Years R/o Makan No. 118, Village Talaidhar, Post- Bataikela, Police Station- Sitapur, District- Surguja Chhattisgarh. (Claimant/ Applicant No. 1)

2 - Mohd. Moin- Uddin Khan S/o Late Neyajuddin Aged About 10 Years Minor They Are Being Represented By Appellant No. 1/ Mother- Sabiya Parveen, W/o Late Neyajuddin Aged 32 Years R/o Makan No. 118, Village Talaidhar, Post- Bataikela, Police Station- Sitapur, District- Surguja (C.G.). Claimant/ Applicant No. 2)

3 - Mohasin Khan S/o Late Neyajuddin Aged About 8 Years Minor They Are Being Represented By Appellant No. 2/ Mother- Sabiya Parveen, W/o Late Neyajuddin Aged 32 Years R/o Makan No. 118, Village Talaidhar, Post- Bataikela, Police Station- Sitapur, District- Surguja (C.G.). (Claimant/ Applicant No. 3)

--- **Appellants**



Versus

1 - Uslan Ekka S/o Shila Ekka Aged About 35 Years R/o Sarascombo, Police Station- Baghicha, District- Jashpur (C.G.). (Driver/ Non-Applicant No.1)

2 - Chetan Kumar Singhaniya S/o Pradeep Kumar Singhaniya Flat No. 10, Sg Heights, Gajanandpuram, Raigarh, District- Raigarh (C.G.) (Vehicle Owner/ Non- Applicant No. 2)

3 - Mandal Prabandhak The New India Insurance Company Limited Mandal Office Sada Complex Transport Nagar Korba District- Korba (C.G.). (Insurance Company/ Non- Applicant No. 3)

4 - Najma Begam W/o Nejamuddin Aged About 57 Years R/o Bataikela, Police Station - Sitapur, District- Surguja (C.G.). (Claimant/ Applicant No. 4)

5 - Nejamuddin S/o Mohi- Uddin Aged About 62 Years R/o Makan No. 118, Village Telaidhar, Post Bataikela, Police Station- Sitapur, District- Surguja (C.G.). (Claimant/ Applicant No. 5)

--- **Respondents**

MAC No.2403 of 2024

For Appellant	:	Shri Sudhir Agrawal, Advocate
For Respondents No.1 to 5	:	Shri Sushil Dubey, Advocate
For Respondent No.7	:	Shri Amartya Bajpai, Advocate on behalf of Shri Ankit Singhal, Advocate
For Respondent No.6	:	None

MAC No.2407 of 2024

For Appellants	:	Shri Sushil Dubey, Advocate
For Respondent No.2	:	Shri Amartya Bajpai, Advocate on behalf of Shri Ankit Singhal,



		Advocate
For Respondent No.3	:	Shri Sudhir Agrawal, Advocate
For Respondents No.4 & 5	:	None Despite Service

Hon'ble Shri Justice Sachin Singh Rajput

Order on Board

06/05/2026

- 1.** As the present appeals have been filed against the award dated 11.9.2024 passed by the Principal Motor Accidents Claims Tribunal, Ambikapur (Surguja) (Chhattisgarh) (for short 'Claims Tribunal') in Claim Case No.23 of 2023, they are being heard and decided by this common order.
- 2.** Parties are referred to herein according to their status before the Claims Tribunal.
- 3.** MAC No.2403 of 2024 has been filed by the insurance company for reduction of the compensation awarded, whereas MAC No.2407 of 2024 has been filed by the claimants for enhancement of the compensation awarded.
- 4.** By the award impugned, against a claim of Rs.71,82,000, learned Claims Tribunal has assessed the dependency to Rs.32,40,000, however, deducted 25% amount from the amount of compensation on account of contributory negligence. Thus, found the dependency to Rs.24,30,000 and thereafter adding Rs.18,000 for loss of estate, Rs.18,000 for funeral expenses, Rs.48,000 for loss of consortium and Rs.40,000 for filial and



parental consortium, awarded total Rs.25,54,000 in favour of the claimants.

- 5.** As per the pleadings of the claim application filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the MV Act'), deceased Neyajuddin was a driver and had gone to Banke Bihari Company, Punjipathara for loading goods in truck bearing registration No.CG 15 DE 3910 on 6.12.2022. On 7.12.2022, at about 11:00 a.m., after loading and parking his truck, he was talking on phone. At that time, the driver of the offending vehicle truck bearing registration No.CG 13 AH 2982 drove the offending vehicle rashly and negligently and dashed to the deceased from behind resulting into injuries on his person. He was taken to the hospital, where he was declared dead, upon which an offence under Crime No.324/2022 under Section 304A IPC was registered in Police Station Punjipathra against the driver of the offending vehicle. As per further pleadings, the deceased was a driver and earning Rs.22,000 per month. Thus, the above stated compensation was claimed.
- 6.** The driver of the offending vehicle remained *ex parte* and did not file any written statement. The owner of the offending vehicle filed his written statement and denied the averments of the claim application. It has been pleaded by the owner that proper parties have not been arrayed. The driver of the offending vehicle had valid and effective driving licence. Thus, liability to pay compensation is upon the insurance company.
- 7.** The insurance company also filed written statement and in usual



course denied the averments of the claim application. It has been pleaded by the insurance company that at the time of incident, the truck of the deceased was not starting. In order to tow his truck, he was affixing a jack rod between his truck and the offending truck and he was in between the two trucks and stuck in between. Thus, both the trucks were involved in the accident and the driver, owner and the insurer of both the trucks would be jointly liable. The owner and insurer of the truck of the deceased are not arrayed as respondents. They are necessary parties. No such accident had taken place as projected. The offending truck was not holding valid permit and fitness certificate. Thus, the insurance company cannot be held liable to pay the compensation.

- 8.** Learned Claims Tribunal framed issues and decided them in favour of the claimants. However, while deciding issue No.1 held that the deceased contributed to the tune of 25% in causing the accident. Thus, reduced the compensation as stated above.
- 9.** Shri Sudhir Agrawal, learned counsel for the appellant/insurance company submits that the monthly income of the deceased to the tune of Rs.15,000 has wrongly been assessed by the learned Claims Tribunal. The salary certificate issued by the employer of the deceased cannot be looked into as an evidence in absence of any other documentary evidence. At the most, the deceased could be considered as a skilled labour. Thus, his income ought to have been considered on the basis of minimum wages prevailing at that time for skilled labour. Apart from this, he submits that the Claims Tribunal erred in holding the age of the



deceased to 35 years relying upon the *post mortem* report. He submits that the driving licence of the deceased was placed on record and also exhibited as Ex.P16C showing his date of birth as 3.2.1985. Thus, on the date of incident, he was more than 37 years of age. Thus, the application of multiplier of 16 is also wrong. Apart from this, he submits that the 50% addition of future prospects is not appropriate. It ought to have been 40%. Thus, in light of above, he submits that the compensation awarded may be suitably reduced.

- 10.** Shri Amartya Bajpai, learned counsel appearing for respondent/vehicle owner supports the impugned award.
- 11.** Shri Sushil Dubey, learned counsel for the claimants submits that apart from the monthly salary of Rs.15,000, the deceased was also being paid Rs.500 per day as diet money. Learned Claims Tribunal erred in not assessing compensation adding the diet money to the emoluments of the deceased. Thus, he submits that compensation may be suitably enhanced. He further submits that the deceased was not driving any vehicle. In fact, he was dashed by the offending vehicle resulting into his death. No pleadings was ever raised by either the owner or the insurance company of the offending vehicle with regard to contributory negligence of the deceased. Thus, the finding of contributory negligence as found by the learned Claims Tribunal deserves to be set aside.
- 12.** I have heard learned counsel appearing for the parties and perused the record of the Claims Tribunal with due care.



- 13.** First point for determination before this Court is as to whether the learned Claims Tribunal committed an error in deducting 25% compensation on account of contributory negligence on the part of the deceased. From perusal of the record, it appears that the deceased was not driving any of the vehicles. Learned Claims Tribunal found that the deceased was fixing a rod with the offending vehicle in order to start his vehicle and was near the offending vehicle and stuck in between the two vehicles. Thus, on the basis of above availability of evidence, the Claims Tribunal found that the deceased also contributed to the accident. In the opinion of this Court, this finding cannot sustain as no specific pleading was ever raised by the owner or the insurance company of the offending vehicle with regard to contributory negligence. The claim application under the M.V. Act is summary in nature. No evidence was also led by the driver of the offending vehicle to suggest that the deceased also contributed to the accident. The criminal case was registered against the driver of the offending vehicle and charge sheet was also filed. In absence of any other evidence contrary to the available on record, in the opinion of this Court, the finding with regard to contributory negligence recorded by the Claims Tribunal appears to be misplaced. Thus, the same is hereby set aside.
- 14.** This leads this Court to second point for determination as to what would be the just compensation to be awarded to the claimants.
- 15.** Learned counsel for the claimants tried to persuade this Court



that the Claims Tribunal erred in not adding Rs.500 per day diet money to the emoluments of the deceased. Whereas, learned counsel for the insurance company submits that the reliance on the salary certificate issued is misplaced and the compensation is to be assessed on the basis of minimum wages of a skilled labour. From the evidence on record, it appears that the deceased was a driver as he had gone to Punjipathra to load certain material on his vehicle. After loading material and parking his vehicle on the side he was talking on phone. As his vehicle was not being started, he was putting jack between his vehicle and the offending vehicle and in the meanwhile the accident occurred. Apart from this, the deceased had a licence to drive a transport vehicle is also exhibited. This is informative piece of evidence to show that the deceased could be the driver of the truck bearing registration No.CG 15 DE 3910.

- 16.** Apart from this, the manager of the company in which the deceased was said to be working as a driver has also been examined and he has stated that the deceased was a driver in his company. It appears that the company had a large number of trucks engaging drivers. In light of the above, this Court can safely gather that the deceased was a driver in truck bearing registration No.CG 15 DE 3910 and had gone to load the material. The salary certificate has been issued by the employer of the deceased which has been duly proved by the manager. Apart from this, some ledger account has also been exhibited which goes to show that some diet money was also being paid. However, it does not disclose that the said diet money was



being paid to the deceased. The evidence also suggests that it has been stated that whenever the deceased was on leave, no diet money was being paid to him. The Courts and the Claims Tribunals have to see that just compensation is awarded. It should not be a meager amount or a bonanza. The learned Claims Tribunal on assessment of the entire evidence available on record gave a finding that the deceased was earning Rs.15,000 per month. Thus, the finding so recorded by the Claims Tribunal is based upon proper assessment of the evidence available on record. Thus, the contention of Shri Sudhir Agrawal, learned counsel for the insurance company is repelled that the compensation should have been calculated on the basis of minimum wages prevailing at the relevant time and the contention of Shri Sushil Dubey, learned counsel for the claimants is also rejected that the deceased driver was getting Rs.500 per day as diet money has not been assessed. The finding with regard to income of the deceased to Rs.15,000 per month is hereby affirmed.

- 17.** Now, next contention of Shri Sudhir Agrawal, learned counsel for the insurance company is that 40% future prospects ought to have been added instead of 50%. The Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. v. Pranay Sethi and others, 2017 ACJ 2700** has laid down parameters for calculation of compensation under the MV Act. Paragraph 61 of the judgment reads thus:

“61. In view of the aforesaid analysis, we proceed to record our conclusions:



XXX

XXX

XXX

(iii) While determining the income, an addition of 50 per cent of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30 per cent, if the age of the deceased was between 40 and 50 years. In case the deceased was between the age of 50 and 60 years, the addition should be 15 per cent. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40 per cent of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25 per cent where the deceased was between the age of 40 and 50 years and 10 per cent where the deceased was between the age of 50 and 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

- 18.** Sub para (iii) of para 61 of the aforesaid judgment indicates that when the deceased had a permanent job and was below the age of 40 years, 50% enhancement ought to have been made. Whereas sub para (iv) of para 61 of the judgment indicates that in case the deceased was self-employed or on a fixed salary, an addition of 40% ought to have been applied. From perusal of the record of the instant case, it appears that the deceased was on a fixed salary of Rs.15,000 per month. Thus, this Court is inclined to add 40% future prospects and hence recalculate the compensation in the following manner:



Sl.No.	Particulars	Amount (Rs.)
1	Annual Income (Rs.15,000 x 12)	1,80,000
2	Income with Future Prospects (Rs.1,80,000 x 40% Future Prospects = Rs.72,000; Rs.1,80,000 + Rs.72,000)	2,52,000
3	Income after Deduction of Personal and Living Expenses of the Deceased (Rs.2,52,000 / 4 = Rs.63,000; Rs.2,52,000 - Rs.63,000)	1,89,000
4	Loss of Dependency after Application of Multiplier (Rs.1,89,000 x 15)	28,35,000
5	Funeral Expenses	16,500
6	Loss of Estate	16,500
7	Spousal Consortium to Wife of the Deceased	44,000
8	Parental Consortium to 2 Children and Filial Consortium to 2 Parents of the Deceased (Rs.40,000 x 4)	1,60,000
Total Compensation =		30,72,000
(-) Compensation Awarded by the Claims Tribunal =		25,54,000
Enhancement in Compensation =		5,18,000

19. In view of the aforesaid analysis, the claimants are held to be entitled to an additional amount of compensation of Rs.5,18,000. The enhanced amount of compensation shall carry simple interest @ 6% per annum from the date of filing of the instant appeals, i.e., 16.12.2024 till final payment of the enhanced compensation. The insurer of the offending vehicle, i.e., The New India Insurance Company Limited is directed to



deposit the amount of compensation as enhanced by this Court along with the interest within a period of 60 days from the date of receipt of a copy of this order. Out of the enhanced amount of compensation, Rs.1,50,000 each, total Rs.3,00,000 shall be invested in fixed deposit in a nationalised bank in the names of claimants/appellants No.2 and 3 till their attaining majority. Rs.1,00,000 shall be invested in fixed deposit in the same nationalised bank in the name of claimant/appellant No.1 for a period of 2 years. Rs.50,000 each, total Rs.1,00,000 shall be disbursed to claimants/respondents No.4 and 5. Remaining amount shall be disbursed to claimant/appellant No.1. Rest of the impugned award shall remain intact.

- 20.** Thus, the appeal filed by the insurance company is dismissed and the appeal filed by the claimants is partly allowed as indicated above. The impugned award is modified to the extent shown above.

Sd/-
(Sachin Singh Rajput)
JUDGE