

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH**

M.A. NO. 61 / 2004

(CLAIM VALUED AT RS. 4,62,000/-)

APPEAL UNDER SECTION 173 OF MOTOR VEHICLE ACT, 1988

APPELLANT
NON-APPLICANT NO.3

United India Insurance Company Ltd.
Through: Its Divisional Manager,
Divisional Office – Main Road, Korba
Tehsil & District – Korba (C.G.)

VERSUS

RESPONDENTS
(APPLICANT NO.1)

1. /

Smt. Dhana Bai, W/o. Late Gulab Singh
Sahu, aged – 25 years, Caste – Sahu,
Occupation – Labour

(APPLICANT NO.2)

2. /

Santosh Kumar, S/o. late Gulab Singh
Sahu, aged 7 years, caste – Sahu

(APPLICANT NO.3)

3. /

Satish Kumar, S/o. Late Gulab Singh
Sahu, aged 5 years, Caste – Sahu.

(APPLICANT NO.4)

4. /

Deolal Sahu, S/o. Late Gulab Singh,
Sahu aged 4 month

Respondent No. 2 to 4 are minors
through : Gurdian – ad – Litem, Mother
Smt. Dhana Bai (Res. No.1) Wd./o Late
Gulab Singh Sahu

All are R/o. At present – Rumgara, tehsil
& District – Korba (C.G.), Permanent
Resident of Village – Gidhha – Teshil-
Navagarh, Distict – Jangir-Champa (C.G.)

(NON-APPLICANT NO.1)5.

Suresh @ Ajju Goswani, Caste –
Goswani, R/o. Village Mukta, P.S. &
Tehsil – Jaijaipur, District – Janjgir –
Champa (C.G.) (Driver)
At present : Infront of Sarswati Shishu
Mandir Sitamani, Korba (C.G.)

(NON-APPLICANT NO.2)6.

Prem Kumar, S/o. Ram Chandra Prasad,
R/o. – Village – KashiGarh, Tehsil-
Jaijaipur, District – Janjgir – Champa
(C.G.) (Owner)

P. R. No.

Presented by

dated

132/04

Dacharya Gupta

12.12.2004

Dacharya

2.4.14

HIGH COURT OF CHHATTISGARH AT BILASPUR**SB: Hon'ble Shri Justice Pritinker Diwaker****M.A. No. 60/2004****APPELLANT**United India Insurance Company
Ltd.**VERSUS****RESPONDENTS**

Indira Bai and others

Shri Dashrath Gupta counsel for the appellant.
Ms. Sonia Kuldip counsel for respondents No.1 to 6.
None for respondent No.7.
Shri Manoj Jaiswal counsel for respondent No.8.

M.A. No. 61/2004**APPELLANT**United India Insurance Company
Ltd.**VERSUS****RESPONDENTS**

Smt. Dhana Bai and others

Shri Dashrath Gupta counsel for the appellant.
Ms. Sonia Kuldip counsel for respondents No.1 to 4.
None for respondent No.5.
Shri Manoj Jaiswal counsel for respondent No.6.

M.A. No. 221/2004**APPELLANTS**

Indira Bai and others

VERSUS**RESPONDENTS**Saresh alias Aju Goswami and
others

Ms. Sonia Kuldip counsel for the appellants.
None for respondent No.1
Shri Manoj Jaiswal counsel for respondent No.2.
Shri Dashrath Gupta counsel for respondent No.3.

M.A. No. 209/2004

APPELLANTS

Smt. Dhana Bai and others

VERSUS

RESPONDENTS

Saresh alias Ajju Goswami and
others

Ms. Sonia Kuldip counsel for the appellants.
None for respondent No.1
Shri Manoj Jaiswal counsel for respondent No.2.
Shri Dashrath Gupta counsel for respondent No.3.

ORDER
(31.03.2014)

As these four appeals arise out of the same accident which occurred on 13.5.2002, they are being disposed of by this common order.

2. Facts of the case in brief are that on 13.5.2002 when the deceased persons namely Shankar Das and Gulab Singh were travelling in a jeep bearing registration No. MP-26F/4355, it met with an accident resulting in their death. Said jeep was owned by one Prem Kumar, insured with United India Insurance Company and driven by its driver Saresh in a rash and negligent manner.

3. Claim Case No. 121/2002 was filed by the legal representatives of deceased Gulab Singh and Claim Case No. 122/2002 was filed by the legal representatives of deceased

32

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Shankar Das claiming compensation of Rs. 15,59,600 and Rs. 23,20,000 respectively. Both these claim cases were decided by the Tribunal by a common award dated 14.10.2003 granting compensation of Rs 4,62,000 in claim case No. 121/2002 and Rs. 2,25,000 in claim case No. 122/2002.

4. While passing the impugned award it has been held by the Tribunal that though at the time of accident the vehicle was duly insured with the insurance company, as the driver of the offending vehicle was not possessing the licence to drive the vehicle, liability cannot be fastened on the insurance company and it is the owner and driver who have to satisfy the claim. Tribunal has further held that as the vehicle was duly insured, the insurance company should first satisfy the award and then it could recover from the owner.

5. Aggrieved with the said award, claimants of claim case No. 121/2002 have filed MA No. 209/2004 and the claimants of claim case No. 122/2002 have filed MA No. 221/2004, for enhancement of compensation. Against the same award passed in claim case No. 121/2002 the insurance company has also preferred MA No. 61/2004 and in claim case No. 122/2002 it has preferred MA No. 60/2004.

6. MA No. 60/2004 and MA No. 61/2004 have been preferred by the Insurance Company on the ground that as driver of the offending vehicle was not having the licence to drive the vehicle

and the vehicle was being driven without permit and in breach of the terms and conditions of the policy, once the insurance company has been exonerated of its liability, order of pay and recover could not have been passed by the Tribunal.

7. In reply to the aforesaid submissions of the counsel for the Insurance company, it has been argued on behalf of the respondents that the order to pay and recover passed by the Tribunal is strictly in accordance with law and there is no infirmity in the same.

8. MA No. 209/2004 and MA No. 221/2004 have been preferred by the claimants for enhancement of the compensation on the ground that the compensation awarded by the Tribunal is inadequate and therefore the same is required to be enhanced under all the heads.

9. While replying to this submission of the counsel for the claimants, it has been argued on behalf of the insurance company as well as the owner of the vehicle that a very reasonable compensation has been awarded and therefore no interference with the same is called for.

10. MA No. 60/2004 and MA No. 61/2004: After due appreciation of the evidence available on record, the Tribunal has come to the conclusion that there was breach of policy and therefore, liability cannot be fixed on the insurance company. However, considering the fact that vehicle was duly insured with

the insurance company, the Tribunal has further directed that it is the insurance company which should first satisfy the claim and then it may recover the same from the owner. This finding of the Tribunal is strictly in accordance with the decision of the Apex Court in the matter of *National Insurance Company v. Swarn Singh and others* reported in the (2004) 3 SCC 297 and this Court does not find any illegality with the same. Accordingly, these two appeals being without any substance are liable to be dismissed and they are hereby dismissed.

11. **MA No. 209/2004:** In this case deceased Gulab Singh was aged about 28 years at the relevant time and was working as a mason. Since there was nothing on record showing the income of the deceased at the time of his death, the Tribunal appears to have been justified in taking his monthly income as Rs. 3000 and annual being Rs. 36,000. There are four claimants in this case i.e. widow and three minor children and thus while calculating the annual loss of dependency, the Tribunal has rightly deducted 1/4th towards his personal and living expenses and calculated the contribution of Rs. 27,000 per annum to the claimants. However, as at the time of accident, the deceased was aged about 28 years, the multiplier of 18 applied by the Tribunal does not conform to the guidelines given by the Apex Court in the matter of *Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another* (2009) 6 SCC 121 and hence it is replaced by 17. Thus if multiplier of 17 is applied, the total loss of dependency comes to Rs. 4,59,000.

12. Under conventional heads, the Tribunal has awarded Rs. 15,000 for love and affection, Rs. 10,000 for loss of consortium and Rs. 5,000 for funeral expenses totaling to Rs. 30,000. This amount under the conventional heads appears to be a little bit on the lower side and therefore it is enhanced to a lump sum of Rs. 50,000. The total compensation awardable to the claimants thus comes to Rs. 5,09,000 and since the Tribunal has already awarded a compensation of Rs. 4,62,000, after deducting the same the enhanced compensation comes to Rs. 47,000. This enhanced amount shall carry the interest at the rate of 6% per annum from the date of application. However, the remaining amount awarded by the Tribunal shall carry the interest at the rate of 9% till its realization from the date of application. The entire award amount would be deposited by the Insurance company but it would be at liberty to recover the same from the owner.

13. **MA No. 221/2004:** In this case deceased Shankar Das was aged about 28 years at the relevant time and was working as a money lender. Since there was nothing on record showing the income of the deceased at the time of his death, the Tribunal appears to have been justified in taking his monthly income as Rs. 3000 and annual being Rs. 36,000. The claimants in this case are mother, father, elder brother, elder sister and niece of the deceased. However, the Tribunal has held that mother and father alone would be the dependents entitled for receiving compensation.



This finding of the Tribunal is strictly in accordance with law and calls for no interference by this Court.

14. Considering the fact that at the time of accident the deceased was unmarried, he must have been spending half of his income towards his personal and living expenses and other half on the dependants. Thus the annual loss of dependency to mother and father of the deceased comes to Rs. 18,000. However, as at the time of accident, the deceased was aged about 28 years, the multiplier of 18 applied by the Tribunal does not conform to the guidelines given by the Apex Court in the matter of *Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another* (2009) 6 SCC 121 and hence it is replaced by 17. Thus if multiplier of 17 is applied, the total loss of dependency comes to Rs. 3,06,000.

15. Under conventional heads, the Tribunal has awarded Rs. 4000 for love and affection and Rs. 5000 for funeral expenses totaling to Rs. 9000. This amount under the conventional heads appears to be on the lower side and therefore it is enhanced to a lump sum of Rs. 40,000. The total compensation awardable to the claimants thus comes to Rs. 3,46,000 and since the Tribunal has already awarded a compensation of Rs. 2,25,000, after deducting the same the enhanced compensation comes to Rs. 1,21,000. This enhanced amount shall carry the interest at the rate of 6% per annum from the date of application. However, the remaining amount awarded by the Tribunal shall carry the interest at the rate

of 9% till its realization from the date of application. The entire award amount would be deposited by the Insurance company but it would be at liberty to recover the same from the owner.

16. Thus MA No. 209/2004 and MA No. 221/2004 are allowed in part with the aforesaid modification in the award impugned. Appeals of the insurance company, as stated above, are dismissed.

Sd/-
Pritinker Diwaker
Judge

the