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2025:CGHC:19722

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1620 of 2017**Reserved on 21.04.2025Delivered on 30.04.2025

Branch Manager, United India Insurance Company Limited,
Branch Office Ambikapur Chhattisgarh Through Authorised
Siganatury For The United India Insurance Company Limited,
Bilaspur Divisional Office 2nd Floor Gurukripa Towers Vyapar
Vihar Road Bilaspur Chhattisgarh

--- Appellant**versus**

1. Sadhna Wd/o Baccha Lal Aged About 44 Years, Occupation House Wife, R/o Village Kalua Post Kalua, P. S. Surajpur District Surajpur Chhattisgarh
2. Hemant Kumar S/o Late Bachha Lal Aged About 23 Years R/o Village Kalua Post Kalua, P. S. Surajpur District Surajpur Chhattisgarh
3. Shyam Lal S/o Late Bachha Lal Aged About 24 Years R/o Village Kalua Post Kalua, P. S. Surajpur District Surajpur Chhattisgarh
4. Bobby Bai D/o Late Baccha Lal Aged About 25 Years Occupation House Wife, R/o Village Kalua Post Kalua, P. S. Surajpur District Surajpur Chhattisgarh

5. Rampravesh Mali, S/o Ramoutar Mali, Aged About 46 Years
Vivekanand Colony Charcha Tehsil Baikunthpur District Koriya
Chhattisgarh

--- Respondent(s)

For Appellant : Mr. B. N. Nande, Advocate, along with
Mr. Priyanshu Gupta, Advocate

For Respondents 1 to 4 : Mr. Praveen Dhurandhar, Advocate, along
with Mr. Prahlad Shrivastava, Advocate

MAC No. 51 of 2018

1. Sadhna W/o Bachcha Lal Aged About 44 Years R/o Bardiya
Police Station Patna, Tahsil Baikunthpur District Korea,
Chhattisgarh.
2. Hemant Kumar S/o Bachcha Lal Aged About 23 Years R/o
Bardiya Police Station Patna Tahsil Baikunthpur District Korea,
Chhattisgarh.
3. Shyamlal S/o Bachcha Lal Aged About 24 Years R/o Bardiya,
Police Station Patna, Tahsil Baikunthpur, District Korea,
Chhattisgarh.
4. Babi Bai D/o Bachcha Lal Aged About 25 Years R/o Village
Kaluwa, Post Kulwa, Police Station Surajpur, District Surajpur,
Chhattisgarh.**Claimants.**

---Appellants

Versus

1. Rampravesh Mali S/o Ramautar Mali Aged About 46 Years R/o
Vivekanand Colony Charcha, Tahsil, Baikunthpur, District Korea,
Chhattisgarh. ..Driver-Cum-Owner Of Offending Vehicle Bearing
Registration No. CG-16-C-7255.
2. Branch Manager, United India Insurance Company Limited,
Branch Office, Ambikapur, District Surguja, Chhattisgarh. **Insurer**
Of Offending Vehicle Bearing Registration No. C G -16-C-7255

--- Respondent(s)

For Appellants	:	Mr. Praveen Dhurandhar, Advocate, along with Mr. Prahlad Shrivastava, Advocate
For Respondent No.2	:	Mr. B. N. Nande, Advocate, along with Mr. Priyanshu Gupta, Advocate

Hon'ble Shri Justice Sanjay Kumar Jaiswal, J.

CAV ORDER

1. Both the appeals have been filed under section 173 of the Motor Vehicles Act challenging the award dated 25/08/2017 passed by the Additional Motor Accident Claims Tribunal (FTC), Baikunthpur, District-Korea, Chhattisgarh in Motor Accident Claim Case No.60/2013 (hereinafter referred as “the award in question”)
2. The facts of the case in brief are that on 14/10/2011 Bachcha Lal (deceased) was going to village Bartiya on a motorcycle with Vinod Kumar. When they reached near Bhadi Devalla, a motorcycle bearing registration No. CG-16-C-7255 (hereinafter referred to as “the offending vehicle”) coming from the opposite direction driven by Rampravesh Mali rashly and negligently dashed their motorcycle, as a result of which, Bachcha Lal suffered grievous injuries on his head, nose, ear, hand etc. He was first taken to Government Hospital, Baikunthpur. However, considering the seriousness of the injuries, he was referred to Regional Hospital, Charcha, from where he was again referred to Apollo Hospital, Bilaspur where he was admitted and treated till 14/11/2011 i.e. for about a month. He came home after taking two days leave from the hospital. On 18/11/2015, when he was going to Apollo Hospital, Bilaspur for treatment, he died on the way. On the information of Vinod Kumar regarding the incident, FIR (Exhibit P-2) was registered on 14/10/2011. After receiving information about death of Bachcha Lal, the Police completed the investigation and filed a charge sheet against the driver of the offending motorcycle,

Rampravesh Mali, under Sections 279, 337 and 304-A of the Indian Penal Code.

3. The wife and three children of deceased Bachcha Lal preferred a claim application under Section 166 of the Motor Vehicles Act stating that 45-year-old Bachcha Lal was working in SECL Katkona Colliery and due to his casual death in the accident, they have become destitute. Therefore, they made a request for compensation of Rs. 43,00,000/- under various heads with interest.
4. In the claim case, deceased Bachcha Lal's wife Sadhna (AW-1) and son Shyamlal (AW-2) were examined from the claimants side, while the driver of the offending motorcycle, Rampravesh Mali (NAW-1) was examined on behalf of the non-applicants. After hearing both the parties, the Tribunal held that the offending vehicle was insured by the appellant-insurance company and there was no breach of insurance conditions. The argument of the non-applicant party regarding contributory negligence on the part of the deceased was rejected by the Tribunal. After the death of Bachcha Lal, as the claimant party did not inform the police about his death, no Merg was registered in the matter nor was the post-mortem of Bachcha Lal conducted. But on the basis of evidence brought on record, the Tribunal came to the conclusion that Bachcha Lal's death was due to accidental injuries and finding this, determined the monthly income of Bachcha Lal to be Rs. 26,783/-, age 55 years, future prospects 15% and personal expenses as $\frac{1}{4}^{\text{th}}$ of the income. Applying the multiplier of 11 and granting Rs.70,000 under other heads, an award of Rs. 27,21,616/- was passed in favour of the claimants and against the appellant insurance company, the driver/owner of the offending motorcycle, Rampravesh Mali.

MAC No.-1620/2017

5. The first argument of learned counsel for the appellant - insurance company is that neither the Police was informed about the death of

deceased Bachcha Lal nor was his dead-body was subjected to postmorted. Thus, it has not been proved in the case that Bachcha Lal died due to accidental injuries. In such a situation, the award in question passed on the application filed under Section 166 of the Motor Vehicles Act is not sustainable. In support his argument, learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Anil and others v. New India Assurance Company Limited and others, (2018) 2 SCC 482.**

6. On the other hand, learned counsel for the claimants has argued that the deceased's wife Sadhna (AW-1) and son Shyamlal (AW-2) have been examined in the court. The documentary evidence of the charge sheet filed by the police against the driver of the offending motorcycle, Rampravesh Mali, have been presented as Exhibit P-1 to 39. From which, it is clear that due to the injuries sustained in the accident, Bachcha Lal was admitted in Apollo Hospital, Bilaspur for about one month till 14/11/2011 and came home only for 02 days. When he was going to Apollo Hospital, Bilaspur for treatment again, he died on the way. Thus, it has been proved from the evidence and circumstances that his death was due to the injuries sustained in the accident. In such a situation, the argument raised by the insurance company is not acceptable, therefore, the insurance company would not get any benefit from the judgment cited by it on account of difference in facts and circumstances of the case.
7. Heard learned counsel for the parties and perused the record minutely.
8. It is clear from the evidence that even Rampravesh Mali, the driver of the offending motorcycle, has not denied the fact that Bachcha Lal got injured in the accident. The deceased's wife Sadhana (AW-1) and son Shyamlal (AW-2) have stated that Bachcha Lal was injured in the accident. The documents presented by them from

Exhibit P-1 to Exhibit P-39 also make it clear that after being injured, Bachcha Lal was first admitted to the Government Hospital, Baikunthpur, then to Charcha Hospital and from 15/10/2011 to 14/11/2011 he was admitted to Apollo Hospital, Bilaspur for treatment. Although postmortem has not been conducted, his medical examination (Exhibit P-4) conducted immediately after the accident shows that he had suffered several injuries and his condition was critical. His treatment continued for about a month in Apollo Hospital, Bilaspur. He was discharged from the hospital on 14/11/2011 and died on 18/11/2011 while on his way back to the hospital for treatment. Charge-sheet has also been filed by the police against Rampravesh under section 304(A) of IPC. There is no circumstance in the entire evidence to suggest that his death was due to any other reason other than the injuries sustained in the accident.

9. In the judgment cited by the insurance company in the case of **Anil** (Supra), the Hon'ble Supreme Court found that the award passed by the Tribunal had been set aside by the High Court. The reason for setting aside was that the death was not proved to have occurred in an accident. The Hon'ble Supreme Court dismissed the appeal filed against that order of the High Court. In that case, the tractor which was said to have caused the accident was owned by the brother of the deceased. In that case, the post-mortem was not conducted. The report regarding accident was lodged with a delay of about one month. There was no documentary evidence of the hospital regarding the treatment of the deceased in respect of his injuries. For the above reasons, the High Court found that it was not proved that the death was caused due to injuries sustained in the accident by the offending vehicle i.e. the tractor.
10. In the case before this Court, not only the FIR was registered on the date of the accident i.e. 14.10.2011, but the documents regarding injured Bachcha Lal's hospitalization in Apollo Hospital,

Bilaspur for one month till 14/11/2011 are on record and the discharge summary has also been produced. It is also clear from the MLC report that the deceased had suffered serious injuries. There does not appear to be any relation between the deceased and the owner of the offending motorcycle. As per the charge-sheet presented by the Police, Bachcha Lal died due to the injuries suffered in the accident and the charge-sheet was filed against the driver of the offending motorcycle, Rampravesh Mali, under Section 304-A of the Indian Penal Code.

11. The claim application under the Motor Vehicles Act is a matter of summary investigation, in which it is not necessary to follow the strict provisions of the Evidence Act. In this regard, while dealing with the reliability of charge-sheet and other documents collected by the Police during the investigation in motor accident cases, in **Mangla Ram v. Oriental Insurance Co. Ltd. And Ors., (2018) 5 SCC 656**, the Hon'ble Supreme Court held that the case of the claimants is required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt and observed as under:

“27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Out understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4721 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in **Dulcina Fernandes (Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646**, noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of

preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal.”

- 12.** In the case of **Mathew Alexander v. Mohammed Shafi & Anr. (2023) 13 SCC 510**, it has been held by the Supreme Court that the claimants have to establish their case on the touchstone of preponderance of probabilities; the standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident and observed as under:

“12.A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in *Dulcina Fernandes v. Joaquim Xavier Cruz*, (2013) 10 SCC 646 which has referred to the aforesaid judgment in *Bimla Devi*.”

- 13.** In the light of the above decisions of the Hon’ble Supreme Court, the conclusion of the Tribunal that the accidental death of Bachcha Lal on 18/11/2011 was the result of the injuries sustained in the accident on 14/10/2011 is not found to be perverse or contrary to the evidence available on record. Therefore, the argument made by the insurance company in this regard is not found to be acceptable.

- 14.** The second argument of learned counsel for appellant - insurance company is that though the fact of head-on-collision between the motorcycle driven by deceased Bachcha Lal and the offending motorcycle driven by driver Rampravesh is clear yet the Tribunal has committed an error by not considering it a case of contributory negligence. It is argued that in this case, the deceased also had contributory negligence, therefore, the award should be modified accordingly.
- 15.** Learned counsel of the claimants side has opposed the above argument of the insurance company and submitted that the conclusion of the tribunal in this regard is appropriate.
- 16.** From perusal of the record, it is clear that the deceased's wife Sadhana and son Shyamlal have been examined as spot witness, who have stated that the driver of the offending vehicle, Rampravesh Mali, was driving the motorcycle rashly and negligently and that the accident happened due to his negligence. On the other hand, the driver of the offending vehicle, Rampravesh Mali himself has said that Bachcha Lal, with three persons on his motorcycle, came at a high speed and hit his motorcycle from the front. But it is noteworthy that not only has a Police report been filed by the claimant side, but finding the negligence and rashness of the driver of the offending motorcycle, Rampravesh in the accident, a charge sheet has also been filed against him. The First Information Report (Exhibit P-2) also confirms the fact that the driver of the offending vehicle, Rampravesh Mali, was driving the vehicle rashly and negligently, due to which the accident took place.
- 17.** The argument of the insurance company that the deceased's wife Sadhana (AW-1) and son Shyamlal (AW-2) are not eye witnesses to the incident is not acceptable. According to the final report of the police (Exhibit P-1), son of the deceased, Shyamlal has been said

to be an eyewitness to the incident, which could not be refuted. Therefore, the statement made by the witness Shyamlal about rash and negligence on the part of Rampravesh i.e. the driver of the offending vehicle in the accident, which is also confirmed by the Police Charge-sheet, could not be refuted, so there is no reason to disbelieve him.

- 18.** Rampravesh Mali has definitely said that the accident occurred due to a head-on-collision between the two motorcycles, which also stands confirmed from paragraph-3 of the cross-examination of deceased's son Shyam Lal. But merely on the basis of the statement that there was a head on collision between the two motorcycles, it cannot be concluded that the deceased also contributed to the accident. The manner in which the deceased's son Shyamlal has stated that the accident occurred due to the rashness and negligence of the driver of the offending motorcycle, Rampravesh Mali, is also confirmed by the final report of the Police (Exhibit P-1) and the First Information Report (Exhibit P-2), which could not be refuted. In such a situation, the contributory negligence of the deceased cannot be determined on the basis of the mere statement of a head on collision. Therefore, the argument of the appellant - insurance company regarding contributory negligence is not found to be acceptable.
- 19.** Learned counsel of the appellant - insurance company has also argued that out of total 4 claimants in the case, 3 claimants are the major children of the deceased. In such a situation, they cannot be considered dependent on the deceased and 1/4th deduction made towards personal expenses should be $\frac{1}{2}$. In this regard, learned counsel for the claimants side submits that the conclusion given by the tribunal is appropriate.
- 20.** From perusal of the record and the evidence presented, it becomes clear that the insurance company has not made any clear

statement in its reply that apart from the wife, the remaining claimants who are the major children of the deceased have any separate income or are married or live separately from the deceased. The age of claimants Hemant Kumar, Shyamlal and Babi Bai is shown as 23, 24 and 25 years respectively. From which, it is found that they are major but there is no evidence regarding whether they are married, live separately or earn separate income. No suggestion in this regard has been given even in the cross-examination of Shyam Lal.

- 21. In this situation, it is found that there is no error in deducting 1/4th of the income towards personal expenses keeping in view the total four claimants i.e. three children along with the wife of the deceased, as legal representatives.
- 22. On the basis of the above discussion, it is found that the arguments raised by the insurance company are not acceptable. Hence, the appeal preferred by the insurance company is hereby **dismissed**.

MAC No. 51/2018

- 23. The Tribunal, after considering the evidence brought on record, has calculated the compensation as under:

Heads	Amount
Monthly income	26783
After deduction of 1/4th of the income towards personal expenses	20088
Annual dependency	241056
Total loss of dependency (applying multiplier of 11)	26,51,616
Funeral Expenses	20,000
Love & affection	50,000
Total	Rs.27,21,616

- 24. Learned counsel for the appellant/claimants submits that the

Tribunal has not considered the future prospects while computing compensation as it failed to appreciate that the deceased could have earned much more if he had not met with the accident. He further submits that the amount given under other heads also needs to be enhanced suitably.

25. On the other hand, learned counsel appearing for the Insurance Company opposes the submission made by the counsel for appellant/claimants and submits that the compensation awarded by the Tribunal is just and proper and does not require any enhancement.
26. Heard learned counsel for the parties and perused the record.
27. 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.
28. 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.
29. From the record it is evident that at the time of accident the deceased was aged about 55 years and he was working in S.E.C.L. Katkona Colliery. As per pay slip Ex.P-10 brought on record, the salary of the deceased was Rs.26,783/- per month. Therefore, the Tribunal has taken Rs.26,783 as monthly income of the deceased which in the opinion of this Court is proper. Accordingly, annual income comes to Rs.3,21,396/-.
30. The Tribunal has not considered future prospects while computing compensation. As per **National Insurance Company Ltd., Vs. Pranay Sethi and Others, (2017) 16 SCC 680** and also considering the age of the deceased to be 55 years, future

prospects would be 15%. After adding 15% of the income towards future prospects i.e. 48209.4 in round figure Rs.48209, the amount comes to Rs.369605.

31. From the annual income of the deceased, there will be statutory deduction towards income tax. The income tax slab for financial year 2011-2012 was as follows:

	<u>Taxable income</u>	<u>Income Tax</u>
Up to 1,80,000	- Nil	
1,80,001 to 5,00,000	- 10% 1,89,605	18,960.5

32. In view of the same, taxable income of the deceased comes to Rs. 1,89,605 (369605-180000) on which 10% income tax would be applicable which is 18960.5, which is rounded off to Rs.18961. After deduction of income tax, the annual income comes to Rs.3,50,644.

33. There are total 4 claimants, so deduction towards personal expenses would be 1/4th of the income as rightly held by the Tribunal. In the light of the judgments of the Hon’ble Supreme Court in the cases of **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, **National Insurance Company Ltd., Vs. Pranay Sethi and Others**, **(2017) 16 SCC 680** and **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram & Ors**; **(2018) 18 SCC 130**, the compensation is being recomputed as below:-

Sl. No.	Particulars	Calculation
1.	Monthly income of the deceased	26783
2.	Yearly income	321396
3.	Future prospects(15% of the income)	48209.4 in round figure 48209
4.	Total	369605
5.	Income Tax	18961

6.	Annual income (after deduction of Income Tax)	350644
7.	Personal expenses (1/4th of the income)	87661
8.	Annual loss of dependency	262983
9.	Total loss of dependency (applying multiplier of 11)	$262983 \times 11 = 2892813$
10.	Funeral Expenses	15000
11.	Loss of estate	15000
12.	Spousal consortium and love & affection (Rs.40,000 to each claimant)	$40000 \times 4 = 160000$
	Total compensation	Rs.30,82,813

- 34.** Thus, the total compensation is recomputed as Rs.30,82,813/- from which after deduction of Rs.27,21,616/- as awarded by the Tribunal, the enhancement would be Rs.3,61,197/-.
- 35.** Accordingly, the claimants are entitled for the enhanced amount of **Rs.3,61,197/-** in addition to what is already awarded by the Tribunal. The enhanced amount shall carry interest @ 6% from the date of enhancement of the award till its realization. The impugned award stands modified to the above extent and rest of the conditions shall remain intact.
- 36.** Resultantly, MAC No.1620/2017 preferred by the Insurance Company stands **dismissed** and MAC No. 51/2018 preferred by the Claimants stands **partly allowed**.
- 37.** The Registry is directed to communicate the claimants in writing “the enhanced amount” in this appeal as against the award made by the Tribunal. The said communication be made in Hindi Deonagri language and the help of paralegal workers may be availed with a co-ordination of Secretary, Legal Aid of the concerned area wherein the claimants reside.

- 38.** Records of the Tribunal along with a copy of this order be sent back forthwith for compliance and necessary action, if any.

**Sd/-
(Sanjay Kumar Jaiswal)
Judge**

Khatai