



2025:CGHC:29034

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1146 of 2019

1 - Branch Manager The Oriental Insurance Company Pvt. Limited,
Manendragarh Road, Near Ambedkar Chowk, Ambikapur, District Surguja
Chhattisgarh.

-- Appellant

versus

1 - Rajendra Paikra S/o Madhura Aged About 45 Years

2 - Melapati @ Mainhin W/o Rajendra Paikra, Aged About 41 Years (Mentally
Retired),

3 - Kuldeep S/o Rajendra Paikra Aged About 15 Years

Respondent No. 2 (Mentally Retired) And No. 3 Minor, Through Natural
Guardian Husband And Father Rajendra Paikra, S/o Madhura, Age About
45 Years,

All are R/o Village Chiranga, Police Station And Tahsil Batouli, District
Surguja Chhattisgarh. (Claimants),

4 - Kamraj Singh Paikra S/o Motiram Aged About 35 Years R/o Village Manja,
Police Station Batouli, Tahsil Batouli, District Surguja Chhattisgarh. (Driver)

5 - Kameshwar Singh S/o Budhram Singh Aged About 59 Years Caste -
Kanwar, R/o Village Chiranga, Police Station And Tahsil Batouli, District
Surguja Chhattisgarh.

--- Respondent(s)

MAC No. 1391 of 2019

1 - Rajendra Paikra S/o Shri Madhura Aged About 46 Years Caste Kanwar

2 - Melapati @ Mainhin W/o Shri Rajendra Paikra Aged About 42 Years
Caste Kanwar, Unsound Mind Person Through Her Husband Rajendra
Paikra S/o Shri Madhura, Aged About 46 Years, Caste Kanwar,

3 - Kuldeep S/o Shri Rajendra Paikra Aged About 16 Years Caste Kanwar.
Minor Through His Father Rajendra Paikra S/o Shri Madhura, Aged About
46 Years, Caste Kanwar,
All are R/o. Village Chiranga, Police Station And Tahsil Batouli, District
Sarguja Chhattisgarh.

---Appellants

Versus

1 - Kamraj Singh Paikra S/o Shri Motiram Aged About 36 Years Caste
Kanwar R/o Village Manja, Police Station And Tahsil Batouli, District Sarguja
Chhattisgarh.....Driver Of Tractor No. C G 15 A E 4710.,

2 - Kameshwar Singh S/o Shri Budhram Singh Aged About 60 Years Caste
Kanwar, R/o Village Chiranga, Police Station And Tahsil Batouli, District
Sarguja Chhattisgarh.....Owner Of Tractor No. C G 15 A E 4710.,

3 - The Branch Manager The Oriental Insurance Company Private Limited,
Manendragarh Road, Near Ambedkar Chowk, Ambikapur, Police Station And
Tahsil Ambikapur, District Sarguja Chhattisgarh.....Insurer Of Tractor No. C
G 15 A E 4710.

---Respondent

For Appellant in (MAC 1146/2019) : Ms. Swati Agrawal on behalf of
and Res.No.3 in (MAC 1391/19) Mr. Pankaj Agrawal, Advocate

For Appellants in (MAC 1391/2019) : Mr. Jayant Singh Bais on behalf of
& Res.1 to 3 in (MAC 1146/2019) Mr. Rishi Rahul Soni, Advocate

For Res. 4 & 5 in (MAC 1146/2019) : Mr. Anuj Kumar Pandey on behalf of
and Res.No.1 & 2 in (MAC 1391/19) Mr. Bhupendra Singh, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order On Board****30/06/2025**

1. Both the appeals are arising out of the same accident and the award, therefore, they are being heard together and decided by this common order.
2. MAC No.1146 of 2019 is filed by appellant/Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging the award dated 15.02.2019, passed in Claim Case No.70/2018, passed by the learned Motor Accident Claims Tribunal, Ambikapur, District – Sarguja (for short 'the Claims Tribunal') on the ground that learned Claims Tribunal fell into error in fastening the liability upon the Insurance Company to satisfy the amount of compensation. Whereas, MAC No.1391/2019 is filed by the appellants/claimants seeking enhancement of the compensation awarded by the learned Claims Tribunal.
3. Facts relevant for disposal of this appeal are that a claim application U/s. 166 of the Act, 1988 was filed seeking total compensation of Rs.93,20,000/- by the appellants/claimants being the legal representative of the deceased Sandeep Kumar Pahadchirga, who died in road accident, stating that on 20.04.2014, Sandeep Kumar was walking from Paharchirga to his native village, Chiranga. When he reached on the road near the fields of Ravanbodra in Paharchirga, driver of tractor non-applicant No. 1, while driving the tractor in rash and negligent manner, lost his control and turned turtled over Sandeep Kumar, due to which he suffered severe head injuries and was immediately taken to the Community Health Center, Batouli for

medical treatment where he succumbed to his injuries and died during treatment. It was further pleaded that at the time of accident, deceased was young and healthy boy of 19 years and was doing the work of agriculture and labourer and was earning Rs.20,000/- per month.

4. Non-applicant No.1 filed reply to the claim application resisting the claim. It was pleaded that at the time of accident, respondent No.1 was driving the offending vehicle carefully and due to poor condition of road, the vehicle turned turtled. He was having valid and effective driving license at the time of accident. Non-applicant No.3 also filed reply denying the averment made in the application. It was pleaded that the claim application was filed on the false and fabricated grounds exaggerating the amount of compensation. It was pleaded that at the time of accident, the deceased himself was driving the offending vehicle without having any driving license to drive the vehicle and in order to get the compensation, non-applicant No.1 was inculpated. At the time of accident, the offending vehicle was being driven in breach of conditions of the insurance policy.
5. The learned Claims Tribunal upon appreciation of the pleadings and the evidence brought on record by respective parties, allowed the claim application in part, awarded total compensation of Rs.7,50,400/- and fastened the liability upon non-applicant No.3/Insurance Company to indemnify the insured.
6. Learned counsel for the appellant/Insurance Company would submit that according to the police report, deceased was occupant of the tractor and due to rash and negligent driving of the offending vehicle by the non-applicant No.1, Kamraj Singh, tractor trolley turned turtuled

and deceased came under the trolley and succumbed to the injuries. In support of her contention, she referred the copy of FIR (Ex.P-3) and morgue intimation (Ex.P-4). She further contended that Ramsagar Paikara (AW-2) is eye-witness to the accident and in his cross-examination, he admitted that at the time of accident, Kamraj Singh (driver) and Sandeep Kumar were travelling on the tractor. Learned Claims Tribunal overlooked the specific evidence of Ramsagar Paikara (AW-2). She further pointed out that witnesses admitted that tractor was fitted with loader and further driver of the offending tractor admitted that it was being used for commercial purpose and therefore, there is breach of conditions of insurance policy.

7. Learned counsel for respondent No.5/owner of the offending vehicle opposes the submission of learned counsel for appellant/Insurance Company and would submit that the learned Claims Tribunal upon appreciation of the pleadings and the evidence available on record has rightly come to conclusion that on the date of incident, deceased was walking on the roadside and due to rash and negligent driving of the offending vehicle by the non-applicant No.1, it turned turtled over the deceased walking on the road. He also pointed out that vehicle was not being used for commercial purpose at the time of accident. There is no such evidence available in record of claim case, therefore, the finding of the learned Claims Tribunal that Insurance company failed to prove the breach of conditions of insurance policy, cannot be said to be erroneous.
8. Learned counsel for respondent No. 1 to 3/claimants would submit that the claimant has also filed appeal separately seeking enhancement of

amount of compensation bearing MAC No.1391/2019. Learned Claims Tribunal erred in assessing the income of the deceased as Rs.4,500/- per month only overlooking to the date of accident i.e. 20.04.2014. Learned Claims Tribunal further awarded less amount of compensation under other conventional head.

9. I have heard learned counsel for parties and also perused the documents placed on record.
10. So far as the grounds raised by learned counsel for appellant/Insurance Company in MAC No.1146/2019 that learned Claims Tribunal erroneously held the appellant/Insurance Company liable to satisfy the amount of compensation is concerned, perusal of the record of the claim case would show that the date of accident is 20.04.2014 at about 7.00 PM. Morgue was reported to the concerned police station on 21.04.2024 at about 9.15 AM. In the morgue intimation lodged on the very next morning mentions that deceased Sandeep Kumar was walking alone on the roadside and driver of the tractor due to his rash and negligent driving turned turtuled the tractor trolley and late Sandeep Kumar came under it. The submission of learned counsel for the appellant/Insurance Company is based on the copy of the FIR as also the evidence of Ramsagar Paikara (AW-2). Copy of FIR in itself is not admissible piece of evidence. It is required to be proved in accordance with law. Morgue intimation was lodged by Rajendra, S/o. Madhu Kanwar, father of deceased. As per evidence, he was not present at the time of accident, however, upon receiving information, he reached on the spot. FIR was lodged by Constable of Police Station Batauli. He was not examined as witness. The

evidentiary value of the FIR and the documents of the criminal case has been considered by the Division Bench of Madhya Pradesh High Court in case of **Nanhu Singh Vs. Jaheer**, reported in **2005 (1) WN 91** and has observed that “In view of the aforesaid, we arrive at the irresistible conclusion that the finding recorded by the Tribunal on the basis of F.I.R. is incorrect, unsound and in a way paves the path of vitiation. The Tribunal had erred by relying on the F.I.R. as if it was the gospel truth or to put it differently, as if it was comparable to Einsteinian theory. In view of the aforesaid, we are not disposed to concur with the aforesaid finding and accordingly dislodge the same”.

11. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Chamundeswari & Ors.** (2021) 18 SCC 596 while considering the issue with regard to admissibility of contents of FIR in evidence before the Tribunal has observed that the evidence which is recorded before the Tribunal has to be given weightage over the contents of FIR and held as under:

“8. It is clear from the evidence on record of PW 1 as well as PW 3 that the Eicher van which was going in front of the car, had taken a sudden right turn without giving any signal or indicator. The evidence of PW 1 & PW 3 is categorical and in absence of any rebuttal evidence by examining the driver of Eicher van, the High Court has rightly held that the accident occurred only due to the negligence of the driver of Eicher van. It is to be noted that PW 1 herself travelled in the very car and PW 3, who has given statement before the police, was examined as eyewitness. In view of such evidence on record, there is no reason to give weightage to the contents of the first information report. If any evidence before the Tribunal

runs contrary to the contents in the first information report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the first information report.”

12. The evidence of Ramsagar Paikara (AW-2), which is referred by learned counsel for appellant/Insurance Company during the course of arguments, in para-5 of his cross-examination would show that this witness has admitted that at the time of accident deceased and Kamraj Singh (driver of offending vehicle) were sitting. As the tractor turned turtuled, Sandeep Kumar came under it. Tribunal looking to the nature of question posed and answered by claimant and also considering the statement made in affidavit and further the evidence in para-5 of the deposition, clarified that deceased was walking on the road.
13. It is settled law that documents/evidence is to be read in its entirety and any of the paragraph or sentence is not be read in isolation. Considering the entirety of the evidence of Ramsagar Paikara (AW-2), submission of learned counsel for the appellant/Insurance Company that the deceased at the time of accident was sitting in the offending tractor appears to be not correct. Accordingly the said submission of learned counsel for the appellant is repelled.
14. So far as the submission of learned counsel for the appellant/ Insurance Company that the vehicle was being used for commercial purpose, therefore, there was breach of policy conditions is also not correct in the facts of the case. True it is that there is some evidence of non-applicant No.1, driver of the offending vehicle that the vehicle was also being used for commercial purpose as the offending vehicle was

fitted with loader, however, no question has been posed to the said witness Kamraj Singh (D.W.-1) to clarify as to whether at the time of accident, the offending vehicle was being used for commercial purpose. There is no such evidence available in record of claim case. In the facts of the case where there is no evidence to suggest that vehicle is being used for commercial purpose on the date of accident, no presumption can be made in this regard only on the ground that often the tractor was being used for commercial purpose.

15. For the foregoing discussions, I do not find any merit in the appeal MAC No.1146 of 2019, filed by the appellant/Insurance Company, which is liable to be and it is hereby dismissed.
16. So far as the MAC No.1391/2019 filed by the claimants seeking enhancement of amount of compensation is concerned, learned counsel for the appellants/claimants has made submission that income of the deceased has been assessed on lower side. Claims Tribunal has not awarded any amount of compensation under head of loss of funeral expenses and amount of compensation under other conventional head.
17. With regard to submission of learned counsel for the appellants/claimant that compensation awarded is on lower side upon perusal of the records would show that date of accident is 20.04.2014, the age of the deceased was 19 years and was working as agricultural labourer. There is no evidence with regard to nature of occupation as also the income of the deceased. In the facts of the case, the learned Claims Tribunal justified in by taking occupation of the deceased to be one of labourer, however, erred in assessing the income of Rs.4,500/-

per month only. In absence of pleadings and evidence to prove the occupation and income of the deceased, the income of the deceased is to be assessed on notional basis keeping in mind the age of deceased, cost of living, price index, wage structure prevailing within the area etc. The Tribunal and Courts may also take help of minimum wages prescribed by the State and prevailing on the date of accident. Minimum wages of labour during that period was fixed by the Authority under the Act of 1948 was Rs.5,468/- per month.

18. In the case at hand, the claimants could not able to prove the nature of occupation and the income of the deceased by clinching evidence as there is no evidence of wage structure prevailing in the area where the deceased is resident of. In the said facts of the case I am of the view that the ends of justice would be served if the income of the deceased is taken on notional basis treating him to be doing the work of labourer as Rs.5,468/- per month considering the minimum wages fixed by the authority. It is ordered accordingly.
19. The Claims Tribunal has rightly added 40% of the assessed income towards the loss of future prospects for which the appellants are entitled for. The multiplier of 18 applied by the learned Claims Tribunal is to the tune of decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr.**, reported in **(2009) 6 SCC 121**. The Claims Tribunal has rightly deducted 1/2 towards personal expenses of the deceased as on the date of accident, the deceased was unmarried.
20. Learned Claims Tribunal has awarded Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate and Rs.40,000/-

towards loss of consortium. The Hon’ble Supreme Court in case of **National Insurance Company Limited. Vs. Pranay Sethi & Ors**, reported in **(2017) 16 SCC 680**, has quantified the amount of compensation to be awarded under the head loss estate and funeral expenses of Rs.15,000/- each and Rs.40,000/- for loss of consortium. In case of **Nanu Ram alias Chuhru Ram (supra)** has explained the types of consortium and held that there are three types of loss of consortium i.e. loss of spousal consortium for widow/widower, loss of parental consortium to the children and loss of filial consortium to parents. The appellant No.1 and 2 are parents of the deceased, appellant No.3 are brother of the deceased therefore, the appellant No.1 & 2 are entitled for filial consortium of Rs.40,000/- each. It is ordered accordingly. There is no dispute with respect to the multiplier of 18 applied by the learned Claims Tribunal, hence, it is hereby affirmed.

21. For the forgoing discussions the amount of compensation to be awarded to the appellants required recomputation, which is as under :-

SN	Head		Amount (in Rs.).
1.	Annual income	:	5,468 x 12 = 65,616.00
2.	Addition of 40% towards future prospects	:	65,616.00 + 26,246.00 = 91,862.00
3.	1/2 deduction towards personal expenses	:	91,862.00 – 45,931.00= 45,931.00
4.	Loss of dependency after application of multiplier of 18	:	45,931 x 18 = 8,26,758.00
5.	For loss of filial consortium to the appellants No.1 and 2 Rs.40,000/- each (40,000 x 2 = 80,000/-.	:	80,000.00
6.	For funeral expenses	:	15,000.00

7.	For loss of estate	:	15,000.00
	Total Compensation	:	9,36,758.00

22. Accordingly, the MAC No.1391/2019 is allowed in part. Now the appellants/claimants shall be entitled for total compensation of Rs.9,36,758.00. Any amount paid to the appellants/claimants as compensation as per impugned award shall be adjusted. Enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact.
23. In the result, the MAC No.1146 of 2019 filed by the Insurance Company is dismissed and the appeal bearing MAC No.1391 of 2019 is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Parth Prateem Sahu)
Judge