HIGH COURT OF CHHATTISGARH, BILASPUR

MA(C) No. 888 of 2013

Tejram S/o Baratu Sidar Aged About 35 years R/o Tilgi, Tah., Post Office- Chikhli, Distt. Raigarh C.G.

---- **Petitioner**

Versus

1. Sukmati W/o Late Puniram Aged About 40 Years R/o Khamhardih, Post Office- Gatadih, P.S. & Tah. Sarangarh, Distt. Raigarh C.G.

2. Lal Das S/o Late Puniram Aged About 23 Years R/o Khamhardih, Post Office- Gatadih, P.S. & Tah. Sarangarh, Distt. Raigarh C.G.

3. Ram Das S/o Late Puniram Aged About 20 Years R/o Khamhardih, Post Office- Gatadih, P.S. & Tah. Sarangarh, Distt. Raigarh C.G.

4. Ram Kumar S/o Late Puniram Aged About 16 Years Minor, Thru- Mother Smt. Sukmati, R/o Khamhardih, Post Office- Gatadih, P.S. & Tah. Sarangarh, Distt. Raigarh C.G.

5. Lalit Nishad S/o Thegu Ram Nishad Aged About 21 Years R/o Madwa, P.S. Chandrapur, Distt. Janjgir-Champa C.G.

6. Diwakar Prasad S/o Govind Ram Pradhan R/o Vinoba Nagar, Raigarh, P.S. Chakradhar Nagar, Raigarh, Distt. Raigarh C.G.

---- **Respondents**

And

M.A.(C) No. 1014 of 2013

1. Sukmati & Ors. W/o Late Puniram Aged About 40 Years R/o Khamhardih, Post Office- Gatadih, P.S. & Tah. Sarangarh, Distt. Raigarh C.G.

2. Lal Das S/o Late Puniram Aged About 23 Years R/o Khamhardih, Post Office- Gatadih, P.S. & Tah. Sarangarh, Distt. Raigarh C.G.

3. Ram Das S/o Late Puniram Aged About 20 Years R/o Khamhardih, Post Office- Gatadih, P.S. & Tah. Sarangarh, Distt. Raigarh C.G.

4. Ram Kumar S/o Late Puniram Aged About 16 Years Minor, Thru-Mother Smt. Sukmati, R/o Khamhardih, Post Office- Gatadih, P.S. & Tah. Sarangarh, Distt. Raigarh C.G.

…... Claimants.

Versus

1. Lalit Nishad S/o Thegu Ram Nishad Aged About 21 Years R/o Madwa, P.S.Chandrapur, Distt. Janjgir-Champa C.G.

2. Diwakar Prasad S/o Govind Ram Pradhan R/o Vinoba Nagar, Raigarh, P.S. Chakradhar Nagar, Raigarh, Distt. Raigarh C.G.

3. Tejram S/o Baratu Sidar Aged About 35 years R/o Tilgi, Tah., Post Office-Chikhli, Distt. Raigarh C.G.

…...**Non-applicants**.

For Appellants : Mr.Ashish Surana, Advocate in M.A(C) No. 888/2013 and Mr. Manoj Kumar Jaiswal, Advocate in M.A.(C) No.1014/2013.

For Respondents : Mr. Wasim Miyan, Advocate for respondent no.6 in M.A.(C) No.888/2013.

Hon'ble Shri Justice Goutam Bhaduri

JUDGMENT

17.07.2015

1. Since both the appeals are arising out of the same claim case No.05/2011, they are being disposed of by this common order. M.A(c). No.888/2013 has been filed by the owner of the offending vehicle challenging the liability whereas M.A(C). No. 1014/2013 has been filed by the claimants seeking enhancement of compensation. By the impugned award dated 03.08.2013, the learned Additional

Motor Accident Claims Tribunal has granted a total compensation of Rs.2,20,000/- and directed the owner non-applicants 1 and 3 to make good the payment.

2. Brief facts of the case are that on 04.11.2010deceased Puniram Uraon was going to Village Charpali from Chandrapur. On the way at about 20.45 hours, near village Baharmuda, the motorcycle bearing Regn.No. C.G.13-ZE-2238 driven by Lalit Nishad original, non-applicant No.1, in a rash and negligent manner, dashed Puniram whereby he sustained injuries and subsequently he died. It was stated that at the time of accident the age of the deceased was 45 years and the claimant were completely dependent on him. It is further stated that Puniram used to earn Rs.4000/- per month being a labour. Consequently an amount of Rs.14,00,000/- was claimed. Non-applicant no.1, Lalit Nishad who was driver of the vehicle remained ex-parte before this Court.

3. Non-applicant No.2, Diwaker Prasad Pradhan contended that at the time of accident i.e. 04.11.2010, he was not the owner of the offending vehicle i.e. motor cycle bearing registration no. MP-26-KC-0898. It was further stated that the said motorcycle was sold to one Tej Ram, non applicant No.3, on 15-11-2009. Therefore, the non-applicant No.3 is the owner of the vehicle, and non-applicant No.2, D.P. Pradhan cannot be held liable. The non-applicant No.3, Tejram denied the averments of the claim petition and it was stated that ownership of the vehicle No.CG-13-ZE-2238 was of Diwaker Prashad which was purchased by him from non-applicant No.2 Diwaker Prashad on 15.11.2009 for a consideration of Rs.9,500/- It was further contended that thereafter he sold the vehicle to one Lalit Nishad, non-applicant No.1 for consideration of Rs.7,000/- on

18.10.2010. Since then vehicle was in possession of Lalit Nishad, consequently, it is submitted that non-applicant no.3, Tejram did not have any control over the said motor-cycle, so the liability cannot be fastened over non-applicant No.3, Tejram.

4. The Tribunal after evaluating the evidence has passed the award of Rs.2,20,000/-. It is directed that respondents 1 & 3 namely Lalit Nishad and Tejram respectively shall pay the amount of compensation to the claimants. Therefore, the owner of vehicle Tejram has filed M.A.(C).No.888/2013 whereas the claimants i.e., widow Sukhmati and 3 sons of deceased dnamely Laldas, Ramdas, Ramkumar have filed M.A.(C) No. 1014/2013.

5. Mr. Ashish Surana, learned counsel appearing in M.A. (C).No.888/2013 for & behalf of owner/appellant Tejram, submits that according to the evidence which is been placed on record, ownership of vehicle remained with Diwaker Prashad Pradhan as per document Ex.P-1C which is registration certificate. He placed reliance on ***Pushpa alias Leela & others V. Shakuntala & others AIR 2011 SC 682*** and would submit that neither the transferor D.P. Pradhan nor the transferee took any step for the change of the name of the owner in the certificate of registration of the motor-cycle bearing registration No.CG-13-ZE-2298, therefore the registered owner has to be held liable to pay the compensation as per Motor Vehicle Act. It is further contended that the accident has not been proved by the claimants as there is no eye-witness to the incident. In this regard, he further submits that the eye-witness Baisakhu, who was examined as AW-3 has not supported the happening of the accident which would be evident from the cross-examination. It is further stated that the quantum of compensation has also wrongly

been worked out as no evidence has been produced to substantiate the income of deceased and no deduction has been made from the income of deceased towards personal and living expenses. He therefore prays for setting aside the award.

6. Shri Wasim Miyan, learned counsel appearing for respondent No.6 in M.A.(C) No. 888/2013 stated that the vehicle was sold to appellant Tejram and therefore despite the fact the registration continues in name of D.P. Pradhan, the learned Tribunal has rightly exonerated him from payment of compensation as vehicle itself was sold to Tejram. He submits that the award is well merited which do not call for any interference.

7. Shri Manoj Kumar Jaiswal, learned counsel appearing in M.A.(C) No.1014/2013 on behalf of claimants submits that the Claims Tribunal has awarded meagre compensation. He further submits that the Tribunal was wrong in taking the notional income of Rs.15,000/- , which has reduced the quantum for just compensation, therefore just compensation has not been awarded.

8. I have heard the learned counsel appearing for the appellants at length and perused the documents & evidence on record.

9. Initially the fact of compensation and finding as to whether the offending vehicle was involved in the accident is considered. The predominant issue is to be decided as to whether claimants were able to prove the accident happened with offending vehicle bearing registration No. CG-13-ZE-2238. Admittedly, at the relevant time offending vehicle No. CG-13-ZE-2238 which caused accident was driven by Lalit Nishad. Perusal of the record shows that Lalit Nishad was ex-parte and either any reply has been filed by said Lalit Nishad

nor any evidence have been adduced. The claimants on their behalf have examined the son of the deceased namely Laldas which is proved by the FIR vide Ex.P-2. AW-3, Baisaku though he has stated in Examination-in-Chief that he has witnessed the incident, but on cross-examination the same was denied. Virtually in cross-examination Baisaku had denied the averments made in examination-in-chief.

10. The FIR was made by one Brijbhaan Prajpati immediately after the accident which was informed to Baisaku by Brijbhaan. According to information which was given to Baisaku and considering his statement in the FIR would go shows that the report was made by Brijbhaan Prajpati. The time of accident was on 04-11-2010 at about 20:45 pm and immediately within one hour of incident i.e. 21:30 pm, the report was lodged wherein number of offending motor-cycle bearing No. CG-ZE-2238 was disclosed.

11. Reading of the FIR would show that report was made to the effect that the motor-cycle bearing registration No. CG-13-ZE-2238 driven in rash and negligence manner dashed the deceased from behind, while he was walking on the road. It is further stated that at the time of incident Basaikuh Uraon and Suraj Bhaan Prajpati were there and identification and whereabouts of the injured was not known to the lodger of the report. In such given facts the statement made in FIR appears to be bonafied as the person who lodged the report was only a passerby, who did not know the injured. Therefore, the contents of the FIR would substantiate the fact that immediately after accident the report was made by Brijbhaan Prajpati about the incident which was also seen by eye-witness Baisakhu. So, on conjoint reading of statement of eye-witness Baisakhu that he had

also reached to the spot after accident reading it along with the averments of FIR made by Brijbhaan, this fact could very well inferred that immediately after accident report was made that the number of offending motorcycle was CG-13-ZE-2238 which dashed the deceased from behind. The Court while deciding a claim petition under Motor Vehicle Act,1988 would not adhere to the rule of evidence of strict proof like that of a criminal case, however, taking the contents of FIR which were corroborated to the extent of happening of accident by statement of eye-witness, Baisaku, it cannot be said that no accident had happened with the offending motorcycle No. CG-13-ZE-2298. Thus the finding of the Tribunal that accident was caused by the said offending motorcycle is affirmed.

12. Now coming to the question of quantum, the Tribunal has taken the income of deceased as Rs.15,000/- per month. The witness Laldas who was son of the deceased examined on behalf of claimants has stated that his father was labour and used to earn Rs.4,000/- per month and in the cross-examination it was further admitted that no documents have been placed on record to prove the income of deceased. Undoubtedly, no documents have been placed on record about the income but taking into the statement of son of the deceased and considering the fact that at the relevant time payment of the unskilled labor was Rs.100 to 150/- per day, the income which has been stated by the son of the deceased do not appear to be infated or exorbitant. It is also not expected that claimant who mainly belonged to unorganized sector being labor would be able to keep any documentary evidence of income.

13. In order to come to a finding of notional income, the reference is made to Section 163-A of the Motor vehicles Act. For the sake of brevity, Section 163-A is reproduced hereinbelow:

> "163-A. Special provisions as to payment of compensation on structured formula basis. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
>
> xxx xxx xxx
>
> (2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
>
> (3) The Central Government may, keeping in view the cost of living by notification in the official gazette, from time to time, amend the Second Schedule."

14. A perusal of Sub-section (3) of Section 163-A of the Act would show that the Courts/Tribunals can take judicial notice of increase in prices of essential commodities and the cost of living during the period between the introduction of the Second Schedule in the year 1994 and the date of accident in the given case.

15. Now reverting to the present case, the accident in the present case is reported to have taken place in the year 2010, therefore if the hike in price of essential commodities and cost of living during the period of 1994 to 2010 are taken into consideration the notional income in the opinion of this Court, would certainly come to Rs.3000/- per month or Rs.36,000/- per annum.

16. Perusal of the claim petition would shows that claim was preferred by four persons namely wife of the deceased (Sukmati), two major sons (Laldas and Ramdas) and one minor son (Ramkumar). Therefore in order to ascertain the personal expenses if the two sons i.e. Laldas aged about 23 years and Ramdas aged about 20 years, are excluded from the dependency, even then the wife of the deceased and one minor son are dependents on the deceased, therefore in view of the decision of the Supreme Court in ***Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another,*** **reported in** ***(2009) 6 SCC 121,*** 1/3rd would be deducted towards personal and living expenses which comes to Rs.12,000/- and thereby the annual dependency would come to Rs.24,000/-. The age of the deceased, Puniram was shown to be 45 years as per post-mortem report (Ex.P-6) therefore according to the multiplier scale given in the Sarla Verma's case, multiplier of 14 would be applicable. Thus, the total dependency comes to Rs.3,36,000/-. Further more, the Tribunal has granted Rs.5000/- for funeral expenses and a consolidated sum of Rs.20,000 for loss of consortium to wife and loss of love and affection which are very scanty. Therefore, I deem it appropriate to grant Rs. 50,000/- for loss of consortium to the wife and Rs.50,000/- for loss of love and

affection to the minor son. The amount of Rs.5000/- awarded for funeral expenses is enhanced to Rs.15,000/-. Thus applying the principle of Sarla Verma's (supra), the compensation to be reassessed as follows:

S.No	Heads	Calculation
(i)	Notional Income	Rs.36,000/- per year
(ii)	1/3 of (ii) deducted as personal expenses of the deceased as the number of dependents were 2.	Rs.36,000 – 12,000/- = Rs.24,000/-
(iii)	Compensation after multiplier of 14 is applied.	(Rs.24,000 x 14 = Rs.3,36,000
(iv)	Loss of consortium to wife	Rs. 50,000/-
(v)	Loss of Love and affection	Rs. 50,000/-
(vi)	Funeral expenses	Rs. 15,000/-
	Total Compensation of award	**Rs.4,51,000/-**

17. Thus the total compensation will be Rs.4,51,000/-. After deducting Rs.2,20,000/- awarded by the Tribunal, the enhancement would be Rs.2,31,000/-. The said amount shall carry interest @ 6% per annum from the date of the claim petition till the date of realization.

18. The registry is further directed to communicate the claimants in writing the “amount of award enhance in this appeal” as against the award made by the Tribunal concerned. The said communication be made in Hindi Deonagari language.

19. Now coming to the part of the liability which has been fastened over on Tejram which is part of subject of challenge in M.A.(C) No.888/2013, the evidence is on record that at the time of accident the vehicle was in the name of D.P.Pradhan, the photocopy of

registration certificate is placed on record vide Ex.P-1C which is proved by PW-1, Smt. Sushma Ekka who is clerk at R.T.O, Raigarh. It is stated that the offending vehicle bearing registration No. C.G.-13-ZE-2238 is registered in the name of D.P.Pradhan and it was further stated that the registration was uptill 17.11.2013.

20. Learned counsel appearing on behalf of the appellant/owner Tejram has placed reliance in ***Pushpa alias Leela & others v. Shakuntala & others AIR 2011 SCC 682*** wherein similar question came for consideration of liability of owner as under Paras 9,10 and 11 are relevant here and quoted below:

> "9. The question of the liability of the recorded owner of the vehicle has to be examined under different provisions of the Act. Section 2(30) of the Act defines"owner" in the following terms:
>
> "2(30)"owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;"
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> 10. Then, section 50 of the Act lays down the procedure for transfer of ownership. It is a long section and insofar as relevant it is reproduced below:
>
> "50. Transfer of ownership.
>
> (1) Where the ownership of any motor vehicle registered under this Chapter is transferred.-
>
> (a) the transferor shall,

(i) In the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as maybe prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected ans shall simultaneously send a copy of the said report to the transferree; and

(ii) xxxxxxx

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) xxxxxxxxx

(3) xxxxxxxxx

(4) xxxxxxxxx

(5) xxxxxxxxx

(6) On receipt of a report under sub-section (1), or an application under sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

“(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority.”

(11) It is undeniable that notwithstanding the sale of the vehicle neither the transferor Jitendra Gupta nor the transferee Salig Ram took any step for the change of the name of the owner in the certificate of registration of the vehicle. In view of this omission.

21. Undoubtedly, the person in who's name registration certificate can be treated as a owner. However, in the instant case, the pleading are read of respondent no.3, Tejram, the appellant herein would be of much relevance. In written statement filed by original non-applicant no.2, D.P. Pradhan was been stated that he was the owner of the motorcycle No.CG-13-ZE-2298 before 15-11-2009 and on 15-11-2009 the said vehicle was sold to Tejram S/o Baraatu Sidaar. Perusal of written statement of Tejram, non-applicant No.3 would reveal this fact was admitted that offending vehicle i.e. motorcycle was purchased by him on 15.11.2009 from original non-applicant no.2. It is further contended that thereafter it was further sold to Lalit Nishad i.e. non-applicant No.1 for an amount of Rs.7,000/- and vehicle was in his control and possession of Lalit Nishad, the person who was driving the vehicle.

22. In a appeal filed by Tejram, it is contended that on the date of accident, the vehicle was in the name of D.P. Pradhan, therefore, he can not be held liable. So efforts have been made to pass on the liability holding the certificate of registration which was in the name of D.P. Pradhan. Though such argument is advanced before this Court, but the written statement is completely otherwise. In the written statement,

the appellant, Tejram by way of additional submission had stated that the vehicle was purchased by him from D.P. Pradhan, therefore, by own admission of Tejram, D.P. Pradhan was divested out of ownership. So the transfer of ownership is established on the basis of admission of Tejram. It is settled proposition that admission is the best evidence, therefore, in teeth of such admission made by the appellant, Tejram it would be too technical to hold that the ownership of the vehicle continued with D.P. Pradhan and Tejram is not liable. The admission made in the written statement goes to the root of the ownership to establish the fact that on the date of accident, D.P. Pradhan was not in the control of the vehicle.

23. The Hon'ble Supreme Court in case of ***Purnya Kala Devi Vs. State of Assam & Another, reported in 2014 (4) SCALE 586***, interpreted the definition of word 'owner', Considering the factum the possession and the control. Therefore, to evaluate the ownership the pith and substance of factum of control and possession of vehicle would be the relevant factor. The appellant, Tejram admitted that erstwhile owner, D.P. Pradhan was not in control of the vehicle. Further contended that it was sold to Lalit Nishad, the non-applicant No.1, who was driving the vehicle.

24. Consequently, applying the principle laid down by the Hon'ble Supreme Court in case of ***Purnya Kala Devi Vs. State of Assam*** (Supra) and reading it alongwith admission of Tejram,

the appellant, the liability can not be fastened over the erstwhile owner only for the reasons that his name continued in the registration book and the name has not been transferred. Had there been no admission, such proposition could have been considered. Therefore in view of the foregoing discussion the finding of learned court below cannot be disturbed and the same is affirmed.

25. In a result, the appeal filed by the Tejram has no merits and accordingly, it is dismissed.

Sd/-

GOUTAM BHADURI
JUDGE

Ashish