



2025:CGHC:20147

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****MAC No. 1961 of 2019**

1 - Manoj Kumar S/o Harakhchand Yadav Aged About 40 Years R/o Ganga Vihar Colony, Amlideeh, (Near Suresh Kirana Stores) P.S. Telibandha, Raipur, District Raipur Chhattisgarh.....Applicant.

2 - Tarun Kumar S/o Harakhchand Yadav Aged About 38 Years R/o Ganga Vihar Colony, Amlideeh, (Near Suresh Kirana Stores) P.S. Telibandha, Raipur, District Raipur Chhattisgarh.....Applicant.

... Appellant**versus**

1 - Ram Milan Singh S/o Shivram Rajput Through Chandrakash S/o Ramvriksh Rai, R/o Plot No. 526 Street 5 B Shanti Nagar Bhilai, P.S. Supela, District Durg Chhattisgarh **Driver** of Truck Bearing No. CG-07 B.B.-8710.....Non-Applicant,

2 - Namrata Prakash Rai W/o Chandraprakash Rai, R/o Plot No. 526 Street 5 B Shanti Nagar Bhilai, P.S. Supela, District Durg Chhattisgarh. **Owner** of Truck Bearing No. CG-07 B.B.-8710.

3 - Future Generalli India General Insurance Co. Ltd., through in-Charge Officer, First Floor Business Park, Block No. 17, Plot No. 8, F-F

9 Thakur Pyarelal Ward Raipur P.S. Azad Chowk Raipur, District Raipur
Chhattisgarh Insurer of Truck Bearing No. CG-07 B.B.-
8710.....**Insurer** **... Respondents**

For Appellants : Mr. Rakesh Thakur, Advocate

For respondents 1 & 2 : None

For respondent no.3 : Mr. Sourabh Gupta, Adocate on behalf of
Mr. Sourabh Sharma, Advocate

(Hon'ble Shri Justice Sanjay Kumar Jaiswal)

Judgment on Board

02/05/2025

1. This appeal under Section 173 of Motor Vehicles Act, 1988 (for short "MV Act") has been filed challenging the award dated 14th September, 2018 passed by the learned Additional Motor Accident Claims Tribunal, Raipur (Chhattisgarh) in Claim Case No.42 of 2017.

2. As per the pleadings of the claim application filed under Section 166 of the MV Act, the claimants are sons of the deceased Harakchand Yadav who was a retired employee of BSNL. On 05.09.2016 at about 4.20 p.m., respondent no.1 who was driving the offending Truck bearing No.C.G.07/BB/8710 in rash and negligent manner hit the motor cycle bearing No.C.G.04 Dy/9447 near Power House Bus-Stand , P.S. Chhavani, Distt. Durg, as a result of which, the the motorcycle riders Harakchand Yadav and Manbhavati Yadav sustained grievous injuries and died. The claimants being sons and legal heirs of deceased filed

claim application seeking a total compensation of Rs. 26,50,000/- on various heads.

3. The learned claims Tribunal has held that the claimants are married persons of aged about 40 and 38 years respectively and they were not dependents on the deceased's pension, therefore, the claimants are not entitled to receive compensation for loss of dependency due to the death of the deceased, however, a lump sum amount of Rs.75,000/- on all heads.

4. The submission of learned counsel for the appellants is that the deceased was a retired employee and was drawing a monthly pension of Rs.23,389/- at the time of accident and the claimants were dependents on his father. He further submits that even if the major, married and earning sons are not fully dependent on the deceased, they still qualify as legal representatives and can file claim application and they ought not to be deprived of compensation, however, Tribunal has grossly erred in not taking the income of the deceased for determining the just compensation and only awarded lump-sum amount of Rs.75,000/-.

5.1 Learned counsel for respondent no.3 supports the award and submits that looking to the facts and circumstances of the case, the Tribunal has rightly passed the award which needs no interference. He submits that since the claimants are major and married persons and they ought to have their own source of livelihood, the Tribunal has rightly held that the claimants were not dependent upon the earnings of the deceased father.

5.2 He further submits that even if the claimants are considered to be the dependents of deceased, the monthly pension being drawn by the deceased ought to be deducted while calculating the dependency thereby no question of grant of compensation would arise.

6. Heard learned counsel for the parties, considered their rival submissions and perused the record with utmost circumspection.

7. Now this Court shall examine as to whether the lump-sum amount of Rs.75,000/- awarded by the tribunal is just and proper compensation in the given facts and circumstances of the case.

8. The Tribunal held that the deceased was a retired employee of B.S.N.L and was receiving a monthly pension of Rs. 23,389/-. Since the claimants are married persons of 40 and 38 years of years respectively they were not dependent on the deceased's pension and thus they are not entitled to get compensation for loss of dependency due to the death of the deceased. However, the Tribunal held that the deceased Harakchand has died as a result of the accident and he was aged about 65 years of age, the claimants have been deprived of their father's love and affection and have suffered loss of property and they would have incurred expenses for his cremation. In such situation, it has granted a lumpsum of amount of Rs.75,000/- on all heads.

9. Hon'ble the Supreme Court had dealt with similar issue in ***National Insurance Company Versus Birender AIR 2020 S,C 434*** and held that in cases involving the motor vehicle accident, even the major, married and earning sons or daughters (or other legal representatives) of the deceased have their right to apply for

compensation and the Tribunal must consider their application regardless of whether they were fully dependent on the deceased.

10. In a mere recent case, the High Court of Punjab and Haryana in ***Narinder Kaur versus Jagmeet Singh 2025 ACJ 357*** has held that dependency is a relative criteria to claim compensation for loss of dependency but it is not limited to financial dependency. Dependency includes gratuitous service dependency, physical dependency, emotional dependency and psychological dependency which cannot be equated in terms of money. Paras 22 , 23 & 24 are relevant and quoted below:

“22. It is submitted by learned counsel for the Insurance Company that since the sons are grown up children of deceased and they ought to be settled in their lives and also father of deceased Karnail Singh ought to have his own source of livelihood, therefore, they were not dependent upon the earning of the deceased and therefore, compensation ought to be denied them. However, the aforesaid submission is not tenable.

23. No doubt, the sons of both the deceased are major and even compensation has been sought at the instance of Balbir Singh, father of deceased Karnail Singh, but out rightly it cannot be concluded about they being not dependents upon the deceased. **It should be noticed that in the Indian Society the children as well as the parents remain dependents upon each other at various stages of life. It is pertinent to mention that the word ‘dependent has a different meaning in different connotations. Some may be dependent in terms of money and others may be dependent in terms of service.**

24. **Thus, dependency is a relative criteria to claim compensation for loss of dependency. It does not mean financial only. It also includes gratuitous service dependency, physical dependency, emotional**

dependency, psychological dependency and so on and so forth, which can never be equated in term of money. Thus considering the same, even the major sons of both the deceased as well as father of deceased Karnail Singh ought not to be deprived of the compensation.”

(Emphasis supplied)

11. Now the question is whether the pension/family pension can be deducted while calculating the loss of dependency ?

12. While dealing with similar issue, Hon’ble Supreme Court in ***Hellen C. Rebello Vs. Maharashtra State Road Transport Corpn., 1999 ACJ***

10 (SC) observed thus :

“(37) Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicle Act is uncertain and is receivable only on the happening of the events, viz., accident, which may not take place at all. **Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two.** Similarly, life insurance policy amount is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which, insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this

amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount...."

(Emphasis supplied)

13. Further Hon'ble the Supreme Court in ***Lal Dei v. Himachal Road Trans. Corpn. 2008 ACJ 1107 (SC)*** reiterated the observations made in *Helen C. Rebello (supra)* and held thus :

"(4) It is contended by learned counsel for the appellants that while calculating the dependency, the Motor Accidents Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the Counsel for the appellants is correct. **The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants.** In *Helen C. Rebello v. Maharashtra State Road Trans. Corpn.*, 1999 ACJ 10 (SC), this Court has specifically dealt with this question and said that **the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no correlation between the two and, therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this, the appeal is allowed. The order of deduction of the family pension is set aside.**"

(Emphasis supplied)

The aforesaid case law has been reiterated in catena of cases, whereby

deduction on account of family pension was denied. Thus, the position becomes very clear that pension/family pension ought not to be deducted while working out the loss of dependency and the compensation to be granted to the claimants.

14. In the instant case, considering the meagre lump-sum amount having been granted under the conventional heads, the compensation so worked out by the learned Tribunal calls for intervention by reappraisal of the workout for the compensation.

15. The Tribunal on the basis of pleadings made in claim petition has recorded the fact that the deceased was aged about 65 years and being a retired employee, was drawing a monthly pension of Rs.23,389/-. Thus taking the monthly pension of Rs.23,389/-, the total annual earnings of the deceased comes to Rs.2,80,668/-. In the financial year 2015-2016, tax was exempted upto 2,50,000/- and thereafter 10% tax was levied upto 5 lakhs. Thus the taxable income would come to Rs.30,668/- and the tax payable thereon would be Rs.3066.80 or say Rs.3067/-. After deducting tax, the net annual earning of deceased would come to **Rs.2,77,601/-** (2,80,668 minus 3,067). Considering the number of dependents of deceased, as per ***Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121***, the deduction to the extent of 1/3rd has to be made towards personal expenses. After deducting one-third towards personal expenses, the annual dependency comes to **Rs.1,85,067/-** (Rs.2,77,601 minus 92,534/-). Considering the age of deceased, as per *Sarla Verma's case*, appropriate multiplier to be applied is 7 and by applying the same,

the total loss of dependency works out to **Rs.12,95,469/-** (1,85,067 x 7).

16. Under the other heads, the claimants are entitled to get Rs.15,000/- for loss of estate, Rs. 15,000/- for funeral expenses and as per ***Magma General Insurance Co. Ltd. Vs. Nanu, AIR Online 2018 SC***, each claimant is entitled to get Rs. 40,000/- for loss of love and affection. In this case, there are 2 claimants, therefore, the claimants would become entitled for a total compensation of **Rs.14,05,469/-**. In view of the above discussion, the compensation payable to the claimants on account of death of deceased is precomputed as under :

1.	Total loss of dependency	Rs.12,95,469/-
2.	Loss of estate	Rs. 15,000/-
3.	Loss of Love and affection (Rs.40000 x 2)	Rs. 80,000/-
4.	Funeral expenses	Rs. 15,000/-
	Total	Rs. 14,05,469/-

17. Hence the total compensation is recomputed to Rs.14,05,469/-. from which after deduction of Rs. 75,000/- as awarded by the Tribunal, the enhancement would be Rs.13,30,469/- Accordingly, the claimants are entitled for enhanced amount of Rs. **13,30,469/-** in addition to what is already awarded by the Claims Tribunal. The enhanced amount shall carry interest @ 6% per annum from the date of enhancement of the award till its realisation.

18. In the result, the appeal is **partly allowed**. The impugned award stands modified to the above extent and rest of the conditions shall

remain intact.

19. The Registry is further directed to communicate the claimants in writing “the enhanced amount” in this appeal as against the amount awarded by the Tribunal. The said communication be made in Hindi Deonagri language and the help of para-legal workers may be availed with a co-ordination of Secretary, Legal Aid of the concerned area where the claimants reside.

Sd/-

Sanjay Kumar Jaiswal
Judge

Rao

MAC No. 1961 of 2019

(Manoj Kumar & another **Versus** Ram Milan Singh and others)

Head Notes

(1) In motor accident claim cases, even the major, married and earning sons or daughters (or other legal heirs) of the deceased have right to apply for compensation and the Tribunal must consider their cases despite they being fully dependent on the deceased.

मोटर दुर्घटना मुआवजा मामलों में यदि मृतक के पुत्र या पुत्री वयस्क, विवाहित और कमाने वाले हैं, तो भी वे मुआवजा प्राप्त करने के लिए पात्र होते हैं। ट्रिब्यूनल को उनके मामलों पर विचार करना चाहिए, भले ही वे मृतक पर पूर्णतः आश्रित न रहे हों।

(2) Pension/family pension ought not to be deducted while working out the loss of dependency and the compensation to be granted to the claimants.

पेंशन/पारिवारिक पेंशन की राशि को आश्रितता की हानि और मुआवजे की गणना करते समय घटाया नहीं जाना चाहिए।