



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



S.B. Civil Misc. Appeal No. 1629/2016

United India Insurance Company Limited, Divisional Office,
Udaipur

----Appellant

Versus

1. Ramesh Chandra S/o Shri Ganga Ram Kharol, Resident of 11, Kali Magri, Kacchi Basti, Bhuwana, Udaipur.
2. Devendra Das S/o Shri Mohan Das Vaishnav, Resident of Brahmano Ka Guda, Thana- Sukher, District Udaipur.
3. Vishwambhar Agrawal S/o Shri Shankar Lal Agrawal, Resident of Kushal Bag Palace, District Banswara

----Respondents

Connected With

S.B. Civil Misc. Appeal No. 1630/2016

United India Insurance Company Limited, Divisional Office,
Udaipur

----Appellant

Versus

1. Smt. Santosh Devi W/o Shri Ramesh Chandra Kharol, Resident of 11, Kali Magri, Kacchi Basti, Bhuwana, Udaipur.
2. Ramesh Chandra S/o Shri Ganga Ram Kharol, Resident of 11, Kali Magri, Kacchi Basti, Bhuwana, Udaipur.
3. Devendra Das S/o Shri Mohan Das Vaishnav, Resident of Brahmano Ka Guda, Thana- Sukher, District Udaipur.
4. Vishwambhar Agrawal S/o Shri Shankar Lal Agrawal, Resident of Kushal Bag Palace, District Banswara

----Respondent

For Appellant(s) : Mr. Mahesh Joshi.

For Respondent(s) : Mr. Naresh Khatri, for non-claimants.

HON'BLE DR. JUSTICE NUPUR BHATI
Judgment

20/08/2024

1. These two misc. appeals have been preferred by the appellant/non-claimant No.3- United India Insurance Company Limited aggrieved against the judgment and award dated



07.04.2016 passed by learned Judge, Motor Accident Claims Tribunal No.2, Udaipur (for brevity, hereinafter referred to as 'learned Tribunal') in MAC Case Nos.508/2014 and 507/2014 respectively, whereby the learned Tribunal has awarded compensation of Rs.15,000/- and Rs.6,37,000/- along with interest @ 7% p.a. in favour of respective claimant(s) and the liability to satisfy the award was fastened upon the appellant/non-claimant No.3.

2. Briefly stated, the facts of the case are that the claimants filed two separate claim petitions viz. claiming compensation on account of injuries suffered by claimant Ramesh Chandra and on account of death of untimely death of claimants' daughter, namely, Sonu, who was riding on the motorcycle from Govt. School, Bhuwana to Chitrakut Nagar, Kali Magri, when it met with an accident at NH No.8 with a Tractor bearing registration number RJ-03-RA-0716, which was being plied by its driver rashly and negligently i.e. non-claimant No.1. In the aforesaid accident, claimant, Ramesh Chandra sustained injuries and claimants' daughter, Ms. Sonu expired. Claimant, Ramesh Chandra filed claim petitions claiming compensation of Rs.12,73,000/- for the injuries suffered by him and the claimants claimed compensation of Rs.22,81,000/- on account of unfortunate death of their daughter in the aforesaid accident. At the time of accident, the tractor was insured with non-claimant No.3 i.e. appellant herein.

3. On behalf of non-claimants No.1 and 2 separate replies were filed while pleading that there was no negligence on the part of the non-claimant No.1/driver in causing the accident. It was, however, alleged that since the vehicle was insured with the non-



claimant No.3, therefore, the insurance company was liable to pay the compensation, if any. On behalf of appellant/non-claimant No.3 reply to claim petition was filed while alleging negligence on the part of rider of the motorcycle i.e. claimant Ramesh Chandra, who was not having the licence to ply the motorcycle; and there was no fault on the part of driver of the insured vehicle. In additional pleas, it was argued that the tractor in question was being used for commercial purposes and no insurance of the trolley was there. An objection with regard to non-claimant No.1 not having valid and effective licence was also taken and information with regard to accident was not provided to the insurance company. It was thus prayed that the claim petitions be dismissed.

4. As per the pleadings of the parties, the learned Tribunal framed four issues. In support of their claim, the claimants examined himself as AW.1 Ramesh Chandra and 19 documents were exhibited. On behalf of non-claimant No.3, one witness NAW.1 Sunil Porwal was examined and one document Ex. A/1 was exhibited.

5. At the conclusion of the trial, the learned Tribunal vide judgment and award dated 07.04.2016 proceeded to partly allow the claim petitions and awarded compensation of Rs.15,000/- and Rs.6,37,000/- along with interest @ 7% p.a. in favour of respective claimant(s) and the liability to satisfy the award was fastened upon the appellant/non-claimant No.3.

6. A Coordinate Bench of this Court vide order dated 21.11.2016, admitted the appeal (CMA No.1629/2016) and directed the appellant to deposit a sum of Rs.12,000/- with the



learned Tribunal within a period of thirty days from the date of order and stayed the recovery of the remaining impugned award/amount dated 07.04.2016.

7. A Coordinate Bench of this Court vide order dated 08.07.2016, admitted the appeal (CMA No.1630/2016) and directed the appellant to deposit 70% of the impugned award along with interest before the Tribunal after taking into account any amount deposited under Section 140 and/or proviso to Section 173 of the M.V. Act within a period of four weeks, and stayed the rest of the award. The amount, when deposited, was directed to be disbursed to the claimants in terms of award.

8. Learned counsel for the appellant/non-claimant No.3 submits that the learned Tribunal has erred while deciding the issue No.1, inasmuch as it was a case of collusion between two vehicles and as per the site plan, the entire responsibility which has been saddled upon the driver of the tractor is not tenable. Learned counsel for the appellant submits that there was equal negligence of the rider of the motorcycle, who plying his motorcycle negligently and thus it was a case of contributory negligence. Learned counsel for the appellant further submits that the learned Tribunal has not considered the fact that tractor was insured, but the trolley attached therewith, was not insured and thus there was breach of policy conditions. Learned counsel for the appellant submits despite the aforesaid position, the learned Tribunal has erred in deciding the issue No.3 against the appellant. Learned counsel for the appellant further submits that the learned Tribunal has awarded compensation in favour of the claimant/injured without there being any proof of injury suffered by him. Learned



counsel for the appellant also questioned awarding interest @ 7% p.a. from the date of filing the claim petition and submits that the same ought to have been 6% p.a.

9. So far as CMA No.1630/2016 is concerned, learned counsel for the appellant/non-claimant No.3 reiterated the submissions made herein above. Learned counsel for the appellant while questioning the quantum of compensation awarded by the learned Tribunal vehemently contended that present case was a case wherein, Ms. Sonu, who was 13 years of age and studying in 8th class, was not assisting her parents in any manner and the learned Tribunal apart from awarding compensation of Rs.4,50,000/- has awarded a sum of Rs.75,000/- under the head of future prospects, which could not be granted in a case of child death in view of judgment passed by Hon'ble Apex Court in the case of *Rajendra Singh & Ors. v. National Insurance Company Ltd. & Ors.* : AIR 2020 SC 3144. Learned counsel for the appellant/non-claimant No.3 while relying upon judgments passed by Hon'ble Apex Court in the case of *Kishan Gopal v. Lala* : (2014) 1 SCC 24 and *Lata Wadhwa & Anr. v. State of Bihar & Ors.* : 2001(4) AIR SCW 3086, submits that in the case of child death, instead of awarding compensation in various other heads, lump sum compensation ought to have been awarded. Learned counsel for the appellant, therefore, submits that the judgment and award passed by the learned Tribunal deserves to be modified.

10. On the other hand, learned counsel appearing for the respondents/non-claimants i.e. driver and owner prayed for dismissal of the appeals.

11. None appears on behalf of claimants despite service.





12. I have considered the submissions made by counsel for the parties and have perused the material available on record.

13. So far as CMA No.1629/2016, preferred by appellant insurance company assailing the judgment and award passed by the learned Tribunal, whereby the learned Tribunal has awarded compensation of Rs.15,000/- along with interest @ 7% p.a. is concerned, having regard to the submissions made by counsel for the parties, this Court finds no force in the same, inasmuch as the learned Tribunal after considering the relevant exhibits has awarded the compensation for the simple injuries suffered by injured/claimant. Accordingly, the appeal No.1629/2016 is **dismissed**.

14. So far as CMA No.1630/2016 preferred by the appellant laying challenge to the judgment and award to the extent of awarding compensation towards future prospects is concerned, this Court finds considerable force. This Court thus finds that in the case of child death, as per the law propounded by the Hon'ble Apex Court in the case of Rajendra Singh (*supra*), no compensation deserves to be awarded towards future prospects. The relevant discussion made in the aforesaid judgment reads as under:

"The deduction on account of contributory negligence has already been held by us to be unsustainable. The determination of a just and proper compensation to the Appellants with regard to the deceased child, in the entirety of the facts and circumstances of the case does not persuade us to enhance the same any further from Rs. 2,95,000/- by granting any further compensation under the separate head of "future prospects". It may only be noticed that R.K. Malik (*supra*) does not consider Satender (*supra*) on the grant of future prospects as far as children are concerned."

[emphasis applied]



15. Therefore, having regard to the submissions made by counsel for the appellant and considering the law propounded in the cases of Rajendra Singh (*supra*), Kishan Gopal (*supra*) and Lata Wadhwa (*supra*), this Court deems it appropriate to modify the award passed by the learned Tribunal holding the claimants entitled to compensation under conventional heads and re-quantify the compensation as under: -

S. No.	Particulars	Amount
1.	Compensation towards the loss of income (filial) 30,000 x 15 = Rs.4,50,000/-	Rs.4,50,000/-
2.	Compensation under conventional heads	Rs.50,000/-
		Rs.5,00,000/-

16. Accordingly, the claimants are held entitled to receive compensation of Rs.5,00,000/- along with same interest as awarded by the learned Tribunal from the date of filing of the claim petition instead of Rs.6,37,000/- as awarded by the learned Tribunal. The amount of compensation already deposited under the directions of this Court shall be adjusted.

17. In the result, the appeal filed by the appellant/non-claimant No.3 insurance company (CMA No.1630/2016) is **partly allowed**.

No costs.

(DR. NUPUR BHATI),J

16 & 17-DJ/-