



2025:CGHC:680

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1746 of 2018

United India Insurance Company Limited Through Its Divisional Manager, Divisional Office No. 1, 1st Floor Krishan Complex, Kutchery Chowk, Raipur, Tahsil And District Raipur Chhattisgarh.

--- Appellant (s)

versus

- 1 - Puran Lal S/o Jethuram Kannouje Aged About 41 Years R/o Village Sundravan, P.S. And Tahsil Palari, District Ballouda Bazar Bhatapara Chhattisgarh.,
- 2 - Chitrarekha Bai W/o Puran Lal Kannouje Aged About 36 Years R/o Village Sundravan, P.S. And Tahsil Palari, District Ballouda Bazar Bhatapara Chhattisgarh.
- 3 - Lokesh @ Lukesh Sen S/o Shri Jagdish Sen Aged About 24 Years R/o Village Amera, P.S. And Tahsil Palari, District Balouda Bazar Bhatapara Chhattisgarh.
- 4 - Ramji Sahu, S/o. Shri Raghunath Sahu, R/o Village Amera, P.S. And Tahsil Palari, District Balouda Bazar Bhatapara Chhattisgarh.

--- Respondent(s)

For Appellant(s)	:	Mr. Dashrath Gupta, Advocate
For Respondent(s) 1 & 2	:	Mr. AD Kuldeep, Advocate
For Respondents 3 & 4	:	Mr. Ravindra Sharma, Advocate

MAC No. 1380 of 2018

- 1 - Puranlal S/o Jethuram Kannouje Aged About 41 Years R/o Village Sundravan, Police Station And Tahsil Palari, District Baloda Bazar - Bhatapara Chhattisgarh.,
- 2 - Chitrarekha Bai W/o Puranlal Kannouje Aged About 36 Years R/o Village Sundravan, Police Station And Tahsil Palari, District Baloda Bazar - Bhatapara Chhattisgarh.,

---Appellant(s)

Versus

- 1 - Lokesh @ Lukesh Sen S/o Shri Jagdish Sen Aged About 24 Years R/o Village Amera, Police Station And Tahsil Palari, District Baloda Bazar Bhatapara Chhattisgarh.,

2 - Ramji Sahu S/o Shri Raghunath Sahu, R/o Village Amera, Police Station And Tahsil Palari, District Baloda Bazar Bhatapara Chhattisgarh.

3 - The United India Insurance Company Limited, Through Branch Manager (Division No. 1) United India Insurance Company Limited Kachahari Chowk Raipur District Raipur Chhattisgarh.

--- Respondent(s)

For Appellant(s)	:	Mr. AD Kuldeep, Advocate
For Respondent(s) 1 & 2	:	Mr. Ravindra Sharma, Advocate
For Respondent No.3	:	Mr. Dashrath Gupta, Advocate

(Hon'ble Shri Justice Naresh Kumar Chandravanshi)

Order on Board

06/01/2025

1. Since both above mentioned appeals arise out of same accident and are directed against same award, they are heard analogously and are being disposed of by this common order.
2. The appellant/Insurance Company has filed MAC No.1746/2018 for setting aside the award dated 09.7.2018 passed in Motor Accident Claim Case No. 70/2017 by Motor Accident Claims Tribunal, Distt. Baloda Bazar, (CG) and also for exonerating it from the liability.
3. By filing MAC No.1380/2018, the appellants/claimants have prayed for enhancement of amount of impugned award dated 09.7.2018 passed in Motor Accident Claim Case No.70/2017 by Motor Accident Claims Tribunal, Distt. Baloda Bazar (CG), whereby, the learned Tribunal has awarded compensation to the tune of Rs.2,75,000/- to the claimants on account of death of Deepak Kannouje, in an accident that occurred on 21.4.2017, by rash and negligent driving of the offending vehicle Tipper Hyva Truck bearing registration No. CG 04 JC 2459 by respondent No.1 and owned by respondent No.2 and insured by respondent No.3/Insurance company.
4. Facts of the case, in brief are that, the claimants filed application under Section 166 of the Motor Vehicles Act, stating *inter alia* that on 21.4.2017 at

about 5.30 pm, Deepak Kannouje, aged about 12 years, was going to shop on his cycle and on the way near Rajkumar Kirana shop, his cycle was dashed by Tipper Hyva Truck bearing registration No.CG 04 JC 2459 (for short 'the offending vehicle'), driven by Lokesh @ Lukesh Sen, as a result of which, Deepak Kannouje received serious injuries and died during treatment. By filing aforesaid application, the claimants sought compensation from the non-applicants. Vide impugned award dated 09.7.2018, the learned Tribunal partially allowed the application filed by the claimants and directed the insurance company to pay compensation to the tune of Rs.2,75,000/- along with interest of 9% per annum from the date of filing of the claim case till date of payment of amount of compensation to the claimants. The aforesaid award has been challenged by the claimants for enhancement of the amount of compensation and the Insurance Company has challenged the same for setting aside the award and also to exonerate them from liability.

5. Learned counsel appearing for Insurance Company submits that he wants to press this appeal only to the extent of cancellation of the insurance policy. In this regard he submits that, respondent No.4/owner of the offending vehicle had issued cheque for premium for the offending vehicle for insurance for the period from 05.4.2017 to 04.4.2018 and the said cheque was dishonoured on 11.4.2017 due to insufficient fund, as such, the policy was cancelled and this fact was intimated to respondent No.4/owner by registered letter dated 13.4.17. Respondent No.4/owner again deposited the amount of premium and the vehicle was got insured for the period 26.4.2017 to 25.4.2018. Thus, the offending vehicle was not insured on the date and time of the alleged accident on 21.4.2017, because insurance policy issued covering that date had been cancelled due to non payment of premium as

cheque given in this regard was dishonoured. Therefore, liability cannot be fastened upon the appellant/Insurance Company.

6. In reply, learned counsel for respondents 3 & 4/Owner and driver would submit that although the cheque given in respect of premium for the policy issued by the appellant/Insurance Company for the period from 05.4.2017 to 04.4.2018 was dishonoured by the appellant's bank, but the cheque dishonour intimation was given to the appellant by the bank on 11.4.2017, despite that, aforesaid intimation was not given to the respondent/owner till 06.5.2017. He further submits that intimation with regard to dishonour of cheque was sent by the appellant/ Insurance Company vide letter dated 13.4.2017 but that letter was submitted in the post office on 04.5.2017, which shows that aforesaid letter was sent by putting back date. He further submits that aforesaid intimation was received by the owner on 06.5.2017 and accident had occurred on 21.4.2017. Learned counsel further submits that aforesaid fact shows that the accident occurred after about 10 days from the date of information received by the appellant/Insurance company about dishonour of the cheque, despite that, the same was not informed by the Insurance Company, as such, the learned Tribunal has not committed any illegality in fastening liability upon the appellant/Insurance Company. He further submits that the said cheque was dishonoured on the ground of insufficiency of fund of only Rs.988/-, which is very meager amount, therefore, it cannot be said that the cheque was given or got dishonoured with malafide intention, hence, he submits that the learned Tribunal has not committed any error in fastening liability upon the appellant/Insurance Company.

7. Learned counsel appearing for the claimants would submit that age of the deceased was 12 years and the learned Tribunal has granted

compensation to the tune of Rs.2,75,000/- only. He further submits that the deceased was student of Class VII and his parents were agriculturists. They belong to poor financial strata, as such, the deceased was also helping them in agricultural work for the livelihood of the family. He further submits that compensation granted by the Tribunal is so meager, therefore, it may be enhanced suitably.

8. In reply, learned counsel for Insurance Company submits that since the deceased was minor and was pursuing his studies, therefore, he was not earning member. Hence, the Claims Tribunal relying on the judgment of **Kishan Gopal and Anr. vs. Lala and Ors.** reported in **(2014) 1 SCC 244**, has rightly granted compensation to the tune of Rs.2,75,000/-, which is not liable to be interfered.

9. I have heard learned counsel for the parties and perused the material available on record.

10. In the instant case, it is not in dispute that earlier insurance policy was issued by the appellant/Insurance Company for the offending vehicle bearing registration for the period from 05.4.2017 to 04.4.2018 and the amount of premium was paid by the respondent/owner through cheque. It is also not in dispute that the said cheque was dishonoured by the Bank on account of insufficiency of fund. During the course of submission, learned counsel for respondent/owner had submitted that the amount of premium was Rs.43,488/- and the same was paid through cheque, but the same got dishonoured only because of insufficiency of Rs.988/-. As per the record, the cheque was given by the respondent/owner on 03.4.2017 vide Ex-NA-2, thereafter policy for offending vehicle was issued on 05.4.2017 vide Ex.NA-6. Cheque dishonour intimation was given by the Bank to the appellant/Insurance Company on 11.4.2017 which was received by it on the

same day. But that information was sent by the appellant/Insurance Company to the respondent/owner of the offending vehicle vide registered post on 04.5.2017 vide Ex.NA-8, although that letter was dated 13.4.2017 (Ex.NA-3). It is evident from the postal receipt (Ex.NA-8) dated 04.5.2017 that, the same was posted on 04.5.2017 and received by the respondent/owner on 06.5.2017.

11. Perusal of the aforesaid facts specifically show that in the instant case, the accident had occurred on 21.4.2017, the cheque dishonour intimation was given by the bank to the Insurance Company on 11.4.2017, meaning thereby the accident occurred after 10 days from the date of receipt of intimation by the insurance company with regard to dishonour of cheque, despite that, said intimation was not given by the insurance company immediately to the owner of the vehicle and insurance company kept pending it for 10 days and the intimation was sent on 04.5.2017 vide Ex.NA-8 by putting earlier date i.e. 13.4.2017, but the same was posted on 04.5.2017.

12. Having considered aforesaid facts, I do not find any good ground to interfere with the impugned award fastening of liability upon the Insurance Company for payment of compensation to the claimants. As the cheque was dishonoured only due to insufficient funds of a meagre amount i.e. Rs.988/-, therefore, if the Insurance Company had given immediate intimation/notice to the respondent/owner, the owner of the offending vehicle had the opportunity to deposit the balance amount but due to reluctance of the appellant/Insurance Company the same was not done. Since the insufficiency of amount was very meager i.e. only Rs.988/-, therefore, it cannot be said that the cheque was got dishonoured by the owner of the offending vehicle with any ulterior motive or with malafide intention.

13. In view of the aforesaid discussion, I do not find any illegality in the finding recorded by the Claims Tribunal fastening liability of paying compensation upon the Insurance Company. As such, that finding recorded by the Claims Tribunal is upheld. Accordingly, appeal i.e. MAC No.1746/2018 filed by the Insurance Company is liable to be rejected.

14. So far as appeal filed by claimants for enhancement of amount of impugned award is concerned, the learned Tribunal has granted Rs.2,75,000/- as compensation in favour of the claimants, who are parents of the deceased boy, aged about 12 years at the time of the accident. The aforesaid amount has been assessed by the Tribunal in the light of judgment rendered by the Apex Court in the case of **Kishan Gopal (supra)**.

15. In the aforesaid judgment, the Apex Court assessed Rs.30,000/- per annum as notional income of 10 year old boy, who died in a motor accident and has further observed to apply multiplier of 15 to compute total loss of dependency. In the instant case, by applying aforesaid method, learned Tribunal has awarded Rs.2,75,000/- as compensation in favour of the claimants.

16. But in the case **Kishan Gupta (supra)**, accident occurred in the year 1992 and judgment was rendered by the Apex Court in the year 1994. In that case, the Apex Court has considered the fact of steep depreciation in the value of rupee, which is prevalent even today. In the instant case, the accident occurred on 21.4.2017, i.e. after 23 years of the above mentioned judgment rendered by the Apex Court in the case of **Kishan Gopal**. Therefore, having considered the aforesaid aspect, the amount of compensation ought to have been increased even on relying the method of Apex Court in the matter of **Kishan Gopal**.

17. In view of the above discussion, instead of calculating the amount of compensation meticulously, I feel inclined to enhance the amount of compensation in favour of the claimants from Rs.2,75,000/- to the tune of Rs.6,00,000/- in the light of judgment rendered by the Apex Court in the case of **Kusmi Devi vs. Md. Kasim & Anr.** decided on 15.5.2023 reported in 2023 Law suit (SC) 964: 2023 ACJ 1658, in which, the Apex Court has enhanced Rs.1 lakh over and above of Rs. 5 lakh awarded by the High Court in respect of death of 3 year old child in a motor accident.

18. Accordingly, appeal, i.e. **MAC No.1746/18 filed on behalf of Insurance Company is rejected** and appeal i.e. **MAC No.1380/2018 filed on behalf of the claimants, who are parents of the deceased, is allowed.** As such, the compensation of Rs.2,75,000/- awarded by the Tribunal is enhanced to Rs.6,00,000/-. The claimants are entitled for a further sum of Rs.3,25,000/- over and above the amount of Rs.2,75,000/-. The above enhanced amount of compensation of Rs.3,25,000/- shall carry interest @ 7% per annum from the date of application, till its actual payment. The enhanced amount shall be kept in fixed deposit in equal share in the name of the claimants in any Nationalised Bank for a period of three years from the date of issuance of fixed deposit.

19. The Insurance Company/United India Insurance Company Ltd. is granted two month's time to deposit enhanced amount of compensation of Rs.3,25,000/- along with aforesaid interest before the concerned Claims Tribunal.

20. The award stands modified to the above extent.

Sd/-
(Naresh Kumar Chandravanshi)
Judge