

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No.1213 of 2003

Kumari Umeshwari, mother late Jugan Bai @ Fugun Bai, aged about 3 years, minor through maternal grand father Lalchand S/o Bisahu Satnami, R/o Village Nayagaon, Tahsil and District Dhamtari, Chhattisgarh

---- Appellant

versus

1. Ishwar Goswami, S/o Fanendra Puri Goswami, aged about 40 years, R/o Village Sarsiwan, Thana Arjuni, Tahsil and District Dhamtari
2. Puneshwar Sahu, S/o Devcharan Sahu, aged about 19 years, R/o Village Sarsiwan, Thana Arjuni, Tahsil and District Dhamtari
3. Oriental Insurance Company through Branch Manager, Near Adarsh Bal Mandir, Dhamtari, District Dhamtari, Chhattisgarh
4. Umed Das, S/o Late Parganiya Satnami, R/o Village Sarsiwan, Thana Arjuni, Tahsil and District Dhamtari, Chhattisgarh

---- Respondents

For Appellant	:	Mrs. Indira Tripathi, Advocate
For Respondents	:	None

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

4.11.2016

1. This is an appeal filed by claimant Umeshwari, who was aged only 2 years at the time when the claim petition was filed in the year 2002.
2. The undisputed facts are that deceased Juganbai alias Fugunbai died as a result of the injuries sustained in an accident involving an Auto-Rickshaw bearing registration No.CG 05 6325 on 23.4.2002. The offending vehicle was owned by Respondent No.2, being driven by Respondent No.1 and was insured with Respondent No.3. Claimant Umeshwari in the claim petition had also arrayed Respondent No.4, Umed Das, who is alleged to be the second husband of the deceased. Umed Das and Tomanlal had also filed a claim petition in which Tomanlal was stated to be an adopted minor child aged about 1 year. The Tribunal held that Tomanlal was not entitled to any compensation

because he was not the son of the deceased and there is no proof that he was adopted by the deceased. This finding of the Tribunal is not under challenge before me.

3. Therefore, the compensation is to be awarded to minor daughter Umeshwari and husband Umed Das, who is stated to be 60 years. The Tribunal assessed the income of the deceased at Rs.40/- - 45/- per day and granted compensation of Rs.62,800/- only.
4. To say the least the award shows total lack of awareness of the Tribunal with regard to the manner in which compensation is to be assessed. Even if a claim petition had been filed under Section 163A of the Motor Vehicles Act (henceforth 'the Act') which deals with no fault liability, the award would have been much higher. It would be a travesty of law if a person who proves negligence is awarded a lesser amount than the amount required to be awarded as no fault liability under Section 163A of the Act. Therefore, in any case, where compensation is assessed after holding the driver of the offending vehicle guilty of negligence, the compensation should be higher than the amount payable under Section 163A of the Act.
5. The Supreme Court in **Sarla Verma (Smt.) v. Delhi Transport Corporation, (2009) 6 SCC 121** has laid down the guidelines which have to be followed in such cases. The deceased had remarried and it appears that this minor girl was not living with the deceased, but she was living with her father. Be that as it may, the fact of the matter is that this minor girl is entitled to much more amount of compensation than that awarded by the Tribunal. Even in the year 2002, any person engaged in a labour work would be getting Rs.60/- per day as has been claimed in the claim petition. Keeping in view future prospects, I assess the income of the deceased at Rs.100/- per day, i.e. Rs.3,000/- per month. Since the deceased had to maintain herself also, the loss

of dependency is assessed at Rs.2,000/- per month or Rs.24,000/- per year and applying multiplier of 18, the compensation works out to Rs.4,32,000/-. In addition thereto, the husband is entitled to Rs.50,000/- for loss of consortium and Rs.18,000/- for funeral expenses. Therefore, the total compensation awarded is Rs.5,00,000/-.

6. In view of the above, the appeal is allowed. The compensation is enhanced from Rs.62,800/- to Rs.5,00,000/-. The claimants, i.e., the husband and the minor daughter shall also be entitled to simple Interest @ 9% per annum from the date of filing of their claim petitions till payment/deposit of the amount. The award of compensation is apportioned as under:

Sl. No.	Claimants	Amount of Compensation Apportioned (Rs.)
1	Minor daughter/claimant Umeshwari	3,50,000
2	Husband/Claimant Umed Das	1,50,000
Total =		<u>5,00,000</u>

7. After the amount of compensation payable in favour of the minor girl is deposited by the insurance company, the Tribunal shall ensure that the said amount is fixed in a fixed deposit in a nationalised bank till the minor attains majority. After attaining her majority, the amount shall be released in her favour. However, the interest accruing on the fixed deposit after 1st January, 2017 shall be paid to her natural guardian, i.e., her maternal grandfather to meet her day to day expenses.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE