

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MISC. APPEAL (C) NO. 695 OF 2010**

1. Sahdeo Netam, S/o Sukhchand Netam, aged about 37 years.
2. Smt. Radhabai Netam, W/o Sahdeo Netam, aged about 34 years.
3. Pikesh Kumar Netam, S/o Sahdeo Netam, aged about 10 years (Minor) (Appellant No.3 being minor through his legal guardian Father Appellant No.1 Sahdeo Netam]  
All R/o Village – Bardula, Police Station- Mainpur, District Raipur (C.G.)

**... Appellants**

**Versus**

1. Mukesh Tiwari, S/o Ramashankar Tiwari, R/o New Bus Stand, Pandri, Raipur, Police Station & District- Raipur (C.G.) (Registered owner of Vehicle Bus Registration No. CG04-E/0378)
2. The National Insurance Company Limited, through Regional Manager, The National Insurance Company Limited, 2<sup>nd</sup> Floor, Mobin Mahal, G.E. Road, P.B. No. 122, Raipur, Tahsil & District Raipur (C.G.) (Insurer of Vehicle Bus Registration No. CG04-E/0378)

**... Respondents**

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|---------------------|---|------------------------------|
| For Appellants      | : | Mr. A.L. Singroul, Advocate. |
| For Respondent No.2 | : | Mr. Qamrul Aziz, Advocate.   |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**05/10/2016**

1. Aggrieved by the award dated 17.2.2010 passed by the Additional Motor Accident Claims Tribunal, Gariyabandh ('the Tribunal' for short) in Claim Case No. 60 of 2009, the present appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) has been preferred by the Appellants/Claimants, who are father, mother, and brother respectively of deceased Deo Kumari, who died in a vehicular accident in the instant case, for enhancement of compensation awarded by the Tribunal.
2. Facts, in brief, as per the claim petition, are that on 29.4.2009 the Bus, bearing Registration No.CG04-E/0378, in which Appellant No.1, Sahdeo Netam along with her daughter Deo Kumari (deceased), aged about 14 years, was travelling, dashed against a tree near Mainpur-

Gariyaband main road on account of rash and negligently driving by its driver, Shyamsundar Yadav. On account of the said accident, Deo Kumari received grievous injuries. She was admitted in the Mainpur Hospital for her primary treatment and when she was being referred to Raipur for better treatment she succumbed to the injuries.

3. This gave rise to the filing of the claim application under Section 166 of the Act by the Appellants/Claimants before the Tribunal for a total compensation of Rs.28,46,000/- against the Respondents who were owner and insurer respectively of the said Bus at the relevant point of time.

4. The Tribunal on a close scrutiny of evidence led, materials placed and submissions made by the parties before it, vide the impugned award dated 17.2.2010, awarded a lump sum amount of Rs.1,00,000/- with interest at the rate of 9.5% per annum as compensation in favour of the Appellants/Claimants, fastening the liability for payment of the same jointly and severally upon the Respondents.

5. Learned Counsel for the Appellants/Claimants has contended that the Tribunal has committed manifest error of law and fact and has awarded a meager lump sum compensation of Rs.1,00,000/- which deserves to be modified and enhanced substantially, relying upon the decision rendered by this Court in matter of *Smt. Urmila Bai Vs. Kashidas & Others*, decided on 4.4.2016 in M.A.(C) No. 455 of 2003.

6. On the other hand, learned Counsel for Respondent No.2-Insurance Company has supported the impugned award so far as the amount of compensation awarded by the Tribunal is concerned.

7. Heard learned Counsel for the parties and perused the records of the case including the impugned award.

8. So far as the quantum of compensation is concerned, the Tribunal has awarded a lump sum compensation of Rs.1,00,000/- to the Appellants/Claimants for the death of the deceased Deo Kumari, who was aged about 14-15 years at the time of accident resulting in her death.

9. The Supreme Court in a recent decision rendered in the case of **Kishan Gopal & Another Vs. Lal & Others, 2014 (1) SCC 244**, a case of 12 years old boy who died in a road accident, has taken the notional income as Rs.30,000/- per annum in the light of its decision rendered in the case of **Lata Wadhwa Vs. State of Bihar, 2001 (8) SCC 197** and as per the legal principles laid down in **Sarla Verma Vs. DTC, 2009 (6) SCC**

**121.** Paragraph 39 of the said decision is reproduced herein under :

"In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of *Sarla Verma v. DTC*, the multiplier of 15 can be applied to the multiplicand. Thus,  $30,000 \times 15 = 4,50,000$  and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in *Kerala SRTC v. Susamma Thomas*, which is referred to in *Lata Wadhwa's* case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants."

10. Relying upon the case of *Lata Wadhwa* (supra) as well as the case of *Kishan Gopal* (supra), this Court also in the case of *Smt. Urmila Bai* (supra) in somewhat similar circumstances where again the age of the deceased was 12 years has enhanced the compensation.

11. In view of the authoratative decisions of the Supreme Court in the case of *Lata Wadhwa* (supra) and *Kishan Gopal* (supra) and also the judgment of this Court in the case of *Smt. Urmila Bai* (supra), the amount

of compensation awarded by the Tribunal in the instant case also deserves to be modified and enhanced accordingly.

**12.** As such in the instant case also taking into consideration the notional income of the deceased as Rs.30,000/- per annum and applying the multiplier of 15 looking to the age of the deceased who was 14-15 years at the time of her accident and also the age of her parents and also keeping in view the amount awarded under the conventional heads in the the aforesaid decisions, the compensation in the instant case has to be reassessed as follows :

| Sl. No.            | Heads                                                                       | Calculation                 |
|--------------------|-----------------------------------------------------------------------------|-----------------------------|
| (i)                | Income                                                                      | Rs.30000/- p.a.             |
| (ii)               | Compensation after multiplier of 15 is applied                              | Rs.30000x15 = Rs.4,50,000/- |
| (iii)              | Conventional heads, including loss of love & affection and funeral expenses | Rs.50,000/-                 |
| Total Compensation |                                                                             | <b>Rs.5,00,000/-</b>        |

**13.** In the result, the appeal is allowed in part. The impugned award dated 17.2.2010 is hereby modified and accordingly enhanced from Rs.1,00,000/- to **Rs.5,00,000/- (Five Lakh only)**. The amount, if any, already paid/deposited shall be adjusted from the enhanced amount of compensation. The enhanced amount of compensation shall however carry simple interest at the rate of 6% per annum from the date of filing of the claim application before the Tribunal till its realisation. So far as apportionment of the shares and the amount to be deposited in the fixed deposit is concerned, the same shall be made in the same manner as directed by the Tribunal. Rest of the conditions of the impugned award shall remain intact. No order as to costs.

Sd/-  
**(P. Sam Koshy)**  
Judge