**NAFR**

**HIGH COURT of CHHATTISGARH, BILASPUR**

**MAC No. 1454 of 2009**

Sukhi Ram S/o late Mangalu Ram Yadav, Age 50 years, R/o village Kapasda, Post Kura, PS Dharsiwa, Distt. Raipur (CG).

**---- Appellant**

**Versus**

1. Manohar Lal Sahu, S/o late Lakshman Sahu, Post Akoli, PS Dharsiwa, Distt. Raipur (CG).
2. Prem Prakash Sahu S/o Sonu Ram Sahu, Village Tanra, Post Akoli, PS Dharsiva, Distt. Raipur.
3. ICICI Lombard General Insurance Co. Ltd. through Branch Manager, at Branch office Raipur, Distt. Raipur (CG).

**---- Respondents**

| | | |
|---|---|---|
| For Appellant | : | Shri Amiykant Tiwari, Advocate. |
| For respondent No.3 | : | Shri P. Acharya under instructions of Shri Amrito Das, Advocate. |

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

**Order On Board**

**20.11.2017**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimants seeking enhancement of compensation against the award dated 06.08.2009 passed by the 11th Additional Motor Accident Claims Tribunal (FTC) Raipur (in short, the Tribunal) in Claim Case No.49/2008. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.65,000/- to the claimant along with interest @ 6 percent per annum from the date of application. While passing the award, the Tribunal has fastened the liability upon the driver and owner of the offending vehicle and have exonerated the insurance company of its liability.
2. Counsel for the appellant-claimant submits that the Tribunal has

wrongly exonerated the insurance company as there is no evidence brought before the Tribunal to establish the fact that the offending tractor was being used for other than agriculture purpose for which it was registered and insured. It was further contended that the amount of compensation awarded by the Tribunal is extremely low as the Tribunal has not taken into consideration the income of the deceased so also multiplier has not been correctly applied for quantifying the compensation and thus prayed for amount to be suitably enhanced.

3. The counsel for the insurance company, however opposing the appeal submits that the finding of the Tribunal seems to be fair and reasonable as there is a categorical finding that the vehicle at the relevant point of time was being used in contravention to the provisions of the MV Act and the conditions to the policy and that the claimant in the instant case being the Husband of the deceased was not dependent upon the income of the deceased wife in any manner, and therefore, the appeal does not have any merit and the same deserves to be rejected.

4. Having heard the contentions put forth on either side and on perusal of records, what clearly reflects is that undisputedly the accident did take place on 14.04.2008 resulting into death of deceased Sonkunwar Bai, aged 45 years at the time of accident and indisputably the said deceased was travelling on Tractor. The evidence which have come on record is that the deceased was sitting on the body of the tractor and only on account of which the insurance company has been exonerated of its liability. As regards the facts that

the vehicle was being used for non agricultural purpose is concerned, this court could not find any evidence which has been adduced by either of the parties with which it can be conclusively held that at the time of accident the vehicle was being used for a purpose other than agriculture work. Further, what is also evident from the evidence which have come on record is that, it is a case where the respondent No.1, the driver of the tractor, had on his own permitted the deceased to travel on the tractor without the knowledge, instructions or permission of the owner and as such there does not seem to have any evidence with which the act of negligence or the act of breach of the statutory provision or the breach of the policy conditions could be attributed upon the owner.

5. In the given circumstances of the case, this court is of the opinion that the appeal of the claimant deserves to be and is allowed to the extent that the responsibility of payment of compensation shall first fall upon the insurance company with liberty to recover the same from the respondents No.1 & 2 i.e. Driver and Owner by initiating appropriate recovery proceedings applying the principle of “Pay and Recover”.

6. As far as enhancement of compensation is concerned, there is sufficient evidence on record that the deceased was a vegetable vendor and was earning Rs.100/-a day which makes Rs.36000/- yearly. Only because the claimant being husband of the deceased by itself would not be sufficient for dis entitling the husband for any compensation under the MV Act when the death and use of motor

vehicle is established from the evidence before the Tribunal. What should not be ignored is the fact that the deceased was also contributing some amount for maintaining family by earning income as a vegetable vendor.

7. Under the given circumstances, this court is of the opinion that the claimant being husband would also be entitled for compensation on account of accidental death of his wife from the use of motor vehicle. Accordingly, assessing the income of the deceased at Rs.100/-per day i.e. Rs.3000/-per month and Rs.36000/-yearly, this court proceeds to quantify the compensation.

8. Keeping in view the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimant shall be entitled for 25 percent of the income towards future prospects.

9. Accepting the yearly income of the deceased at Rs.36000/- if 25 percent of it is added towards future prospects, the amount would reach to Rs.45,000/-, of which if 1/3rd is deducted towards personal expenses, the would come to Rs.30,000/-, which if multiplied applying the multiplier of 14, the compensation would reach to Rs.4,20,000/-. Thus, it is ordered that the claimant shall be entitled for Rs.4,20,000/- for loss of dependency.

10. Further, this court is of the opinion that the claimant shall also be entitled for a lump sum compensation of Rs.30,000/- under conventional heads instead of Rs.15,000/- as awarded by the Tribunal. Thus, the total compensation payable to the claimant would

become Rs.4,50,000/- It is ordered accordingly that the claimant shall be entitled for a total compensation of Rs.4,50,000/- instead of Rs.65,000/- as awarded by the Tribunal.

11. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.

12. Accordingly, the appeal of the appellant-claimant stands allowed and disposed of. The liability of payment of compensation shall first be upon the respondent No.3-insurance company with liberty to recover the same from the respondents No.1 and 2, Driver and Owner by initiating appropriate recovery proceedings.

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

inder