

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MA No. 472 of 2002**

Smt. Bhanudevi, aged 40 years, D/o Late Lalmani (Panika) R/o Amagohan Post Khongsara, Tehsil Kota, Civil and Revenue District Bilaspur (CG).

---- Appellant**Versus**

1. A.K. Jain (Abhilesh Kumar Jain) S/o Sohagmal Jain aged 41 years approx, Sub Engineer Gramin Yantriki Seva Pandaria, Permanent Address Ganj Basoda, Near Bus Stand, Vidisa (MP).
2. National Insurance Company Limited Priyadarsani Nagar, Bilaspur (CG).

---- Respondents

For Appellant	:	Shri Keshav Dewangan, Advocate.
For respondent No.1	:	Shri Sunil Sahu, Advocate.
For respondent No.2	:	Shri Ratan Pusty, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy
Order On Board

11/08/2017

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation against the award dated 20.07.2001 passed by the Addl. Motor Accident Claims Tribunal, Mungeli (in short, the Tribunal) in Claim Case No.16/1999.
2. It is a case where the deceased Lalmani met with an accidental death on 07.08.1998 when he was hit by the respondent No.1 who was driving the motorcycle Hero Honda bearing registration No.MP-26-KB-2070. The claimant i.e. widow of the deceased Lalmani filed a claim case under Section 166 of the Motor Vehicles Act. The Tribunal considering the pleadings and evidence which have come on record vide the impugned award has granted compensation of Rs.4,62,500/- along with interest @ 12 percent per annum from the date of

application. However, while passing the said award, the Tribunal has exonerated the insurance company of its liability of payment of compensation and has fastened the same upon the owner of the motorcycle.

3. The said award is assailed by the claimant firstly so far as exonerating the insurance company of its liability and secondly that the compensation awarded by the Tribunal is on the lower side and the same deserves to be enhanced suitably. Further, income under future prospects has also not been considered by the Tribunal.
4. So far as liability which has been fastened upon the owner is concerned, counsel for the claimant relies upon the decision of Supreme Court in case of National Insurance Co. Ltd. Vs. Bhagwani & Ors, 2004 (3)SCC 347, a judgment which has been passed relying upon the decision of Supreme Court in case of National Insurance Co.Ltd. Vs. Swaran Singh & Ors, 2004(3)SCC 297. In furtherance to the aforesaid two decisions of the Supreme Court, counsel for the appellant also relied upon a decision of this High Court in case of M/s Anaal Automobiles Vs. Ashish Kumar Shukla & Ors.,2008 (2) CGLJ 41, wherein this court also relying upon the decision of Supreme Court in case of Swaran Singh (Supra) has fastened the liability of payment of compensation upon the insurance company with a rider to recover the same from the owner of the offending vehicle.
5. In view of the aforesaid three judgments, this court has no hesitation in holding that the law which was passed in Swaran Singh (Supra) still holding good and following the decision of this court in case of

M/s Anaal Automobiles (Supra), the Tribunal in the instant case also ought to have accepted the same view and should have fastened the liability of payment of compensation upon the insurer and owner of the motorcycle jointly and severally. It is ordered accordingly. The award stands modified and it is held that the payment of compensation shall be jointly and severally be upon the insurance company as well as upon the owner of the said vehicle. The payment shall first be made by the insurance company with liberty to recover the same from the respondent No.1-owner.

6. For the purpose of recovery of the awarded amount from the owner, the insurance company shall have liberty of obtaining appropriate orders of attachment of property of respondent No.1 towards the security of the amount which the insurance company has to recover as has been laid down by the Supreme Court in case of National Insurance Co.Ltd. Vs. Challa Bharathamma & Others, 2004(8)SCC 517.
7. So far as enhancement of compensation is concerned, indisputably the deceased at the relevant point of time was working as Sub Inspector in the Telephone Department. Ex. P/14, Salary Slip, was produced before the Tribunal and the entire gross salary has been taken into account for the purpose of quantifying the compensation. However, if we take into account the guidelines laid down by the Supreme Court in case of Sarla Verma and Others Vs. Delhi Transport Corporation & Anr. 2009 (6)SCC 121 as also subsequent decisions of the Supreme Court, the loss of future prospects has not

been taken into account for quantifying the compensation in the present case. Therefore, considering the age of the deceased at the relevant point of time, the future income to be considered for quantifying the compensation would be 30 percent which in the instant case would be Rs.1500/-. If the same is added in the monthly income of the deceased i.e. Rs.5000/- it makes it Rs.6500/- and if multiplied by 12 it becomes Rs.78000/- which would be the annual income of the deceased. Of which, if 50 percent is deducted towards personal expenses, the net yearly income would be Rs.39000/-. If the same is multiplied with multiplier of 15, the amount of compensation payable towards loss of dependency would be Rs.5,85,000/-instead of Rs.4,50,000/-as awarded by the Tribunal.

8. So far as compensation under the other heads are concerned, taking into account the decision of Supreme Court in the recent past, this court is of the opinion that amount of Rs.12,500/- awarded by the Tribunal under the other heads in a death case is definitely on the lower side and the same also deserves to be and is accordingly enhanced by a lump sum compensation of Rs.75,000/-. Thus, the total compensation payable to the claimant would be Rs.6,60,000/- instead of Rs.4,62,500/-
9. The appellant-claimant accordingly shall now be entitled for an enhanced compensation of Rs.1,97,500/-in addition to what has already been awarded by the Tribunal. The said amount shall carry interest at the same rate as awarded by the Tribunal. Rest of the condition in the award shall remain intact.

10. With the aforesaid, the appeal stands allowed to the above extent.

Sd/-
(P. Sam Koshy)
Judge

inder