

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1017 of 2017**

Branch Manager, United India Insurance Company Limited Chakradhar Nagar Near Shanti Palace Villa, Raigarh, Chhattisgarh Through Its Authorized Authority- Divisional Manager, Divisional Office 2nd Floor Gurukripa Towers, Vyapar Vihar Road, Bilaspur, District Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. P.P.Khalkho S/o Charon Khalkho Aged About 52 Years
2. Minor Shailendra Khalkho, S/o P P Khalkho, Aged About 14 Years Minor- Through Father P P Khalkho, Both R/o Rambhatha Raigarh, Police Station City Kotwali, Tahsil & District Raigarh, Chhattisgarh.
3. Gokulanand Panda S/o Shambhucharan Panda, Aged About 39 Years R/o Village Junadih, Tahsil & Police Station- Lailunga, District Raigarh, Chhattisgarh. (Owner) Permanent R/o Village Vishwanathpali, Police Station Chakradhar Nagar, Tahsil & District Raigarh, Chhattisgarh.
4. Om Kumar Purseth S/o Mahendra Kumar Purseth Aged About 37 Years Occupation Driver, R/o Village Pata, Police Station & Tahsil Tamnar, District Raigarh, Chhattisgarh. (Driver).

---- Respondents

For Appellant : Shri Dashrath Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****26/07/2017**

1. The present is an appeal under Section 173 of the Motor Vehicles Act against the award dated 04.04.2017 passed by the 1st Additional Motor Accident Claims Tribunal, Raigarh, in Claim Case No.08/2016. Vide the impugned award the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act filed by the claimants on the death of deceased Urmila Khalko in a road accident on 04.05.2015 involving Scorpio Jeep bearing registration No.CG-13-C-6603, owned by respondent No.3 and driven by respondent No.4, has granted

compensation of Rs.50,25,436/- along with interest @ 6 percent per annum from the date of application. It is this award which is under challenge in this appeal.

2. The deceased at the time of accident was aged around 51 years and was working as Headmistress in a Govt. school.
3. The challenge to the impugned award is on three grounds. Firstly, the multiplier applied by the Tribunal is erroneous, secondly adding of 30 percent income towards future prospect is bad in law and lastly since the claimant No.1, the Husband of deceased, was working as government employee, therefore deduction made towards personal expenses should have been made of $\frac{1}{2}$ instead of $\frac{1}{3}$ rd while quantifying the compensation.
4. The fact whether the Husband of the deceased is a government servant is immaterial so far as quantification of the compensation is concerned. Moreover, in the instant case, the deceased is the wife and the mother of the claimants No.1&2 respectively and that she undisputedly was a government employee and was Headmistress at one of the Govt. School and she was receiving handsome salary at the time of accident. She had more than 10 years of service left in her career. Further, since there were only two claimants, the deduction made by the Tribunal i.e. $\frac{1}{3}$ rd towards personal expenses of the deceased is in consonance to the law laid down in the case of Sarla Verma (Supra) by the Supreme Court, and therefore, the same cannot be held to be bad in law.
5. Likewise, considering the case of Rajesh & Ors. Vs. Rajbir Singh &

Ors., 2013(9) SCC 54, wherein referring to the judgment of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. 2009(6) SCC 121, the Supreme Court has decided that future prospects can also be given to a deceased who has crossed the age of 50 years. Though the issue has subsequently been referred to a larger Bench, but as long as judgment of Rajesh (Supra) is not held to be bad in law and keeping in view the reasons assigned by the Supreme Court in deciding the said case i.e. accepting the provision of law to be a liberal legislation and considering the rise of cost of living which is taking place in the present time, awarding of future prospects for the purpose of quantifying the compensation cannot be said to be harsh and bad in law.

6. As regards grant of multiplier is concerned, though the Tribunal ought to have applied the multiplier of 11, however, keeping in view the fact that the multiplier applied in the instant case is 12 and the difference is only of one, this court refrains from interfering with the multiplier applied by the Tribunal.
7. So far as liability part is concerned, the appellant has challenged on the ground of delay in lodging FIR and that there is no substantial proof of accident in fact to have occurred with the alleged offending vehicle which has been insured by the present appellant. However, the said argument cannot be accepted for the reason that the owner and driver have been proceeded ex-parte before the Tribunal and the insurance company in spite of owner and driver being ex-parte, have not been able to lead sufficient evidence to establish this fact. In the

absence of any cogent evidence, the said ground is not tenable.

8. Considering the peculiar facts and circumstances of the case, this court does not find and strong case made out to interfere with the impugned award. The appeal is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder