

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1289 of 2007**

1. Smt. Sukhdei Yadav, Aged about 31 years, Wd/o. Late Shri Ram Bachan Yadav,
2. Abhimanyu Yadav, Aged about 19 years, S/o. Late Shri Ram Bachan Yadav,
3. Abhay Kumar Yadav, Aged about 16 years, S/o. Late Shri Ram Bachan Yadav
4. Kumari Chanda Devi, Aged about 14 years, D/o. Late Shri Ram Bachan Yadav
5. Kanhaiya Yadav, Aged about 12 years, S/o. Late Shri Ram Bachan Yadav
6. Piyush Kumar, Aged about 10 years, S/o. Late Shri Ram Bachan Yadav
7. Sunil Kumar, Aged about 7 years, S/o. Late Shri Ram Bachan Yadav

Appellant No. 3 to 7 are Minor through: natural guardian mother Smt. Sukhdei Yadav (Appellant No.1)

All R/o. Village Mahraiganj, Post Ramgarh, P.S. Buluwa, Tahsil Sakaldih, District Chandauli (U.P.) Presently R/o. Dayalbandh, P.S. Kotwali, Tahsil and District Bilaspur Chhattisgarh

---- Appellants

Versus

1. Shri A.N. Tiwari, S/o. Late Shri Kavlesh Tiwari, R/o. Plot No. 345, T.P. Nagar, Korba, District Korba Chhattisgarh
2. United India Insurance Company Limited, Through: Branch Manager, Stadium Road, T.P. Nagar Korba, Tahsil and District Korba Chhattisgarh

----Respondents

MAC No. 188 of 2008

United India Insurance Company Limited, Through: Branch Manager, Stadium Road, T.P. Nagar Korba, Tahsil and District Korba Chhattisgarh

---- Appellants

Versus

1. Smt. Sukhdei Yadav, Aged about 31 years, Wd/o. Late Shri Ram Bachan Yadav,
2. Abhimanyu Yadav, Aged about 19 years, S/o. Late Shri Ram Bachan Yadav,
3. Abhay Kumar Yadav, Aged about 16 years, S/o. Late Shri Ram Bachan Yadav
4. Kumari Chanda Devi, Aged about 14 years, D/o. Late Shri Ram Bachan Yadav

5. Kanhaiya Yadav, Aged about 12 years, S/o. Late Shri Ram Bachan Yadav
6. Piyush Kumar, Aged about 10 years, S/o. Late Shri Ram Bachan Yadav
7. Sunil Kumar, Aged about 7 years, S/o. Late Shri Ram Bachan Yadav

Respondents No. 3 to 7 are Minor through: natural guardian mother Smt. Sukhdei Yadav (Respondent No.1)

All R/o. Village Mahrajanj, Post Ramgarh, P.S. Buluwa, Tahsil Sakaldih, District Chandauli (U.P.) Presently R/o. Dayalbandh, P.S. Kotwali, Tahsil and District Bilaspur Chhattisgarh

8. Shri A.N. Tiwari, S/o. Late Shri Kawlesh Tiwari, R/o. Plot No. 345, T.P. Nagar, Korba, District Korba Chhattisgarh

----Respondents

For Claimants	:	Mr. Arvind Kumar Dubey, Advocate
For Insurance Company	:	Mr. H.B. Agrawal, Sr. Advocate along with Ms. Riturani Mukharjee, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/09/2017

1. These are two appeals arising out of the award dated 17.08.2017, passed by the Additional Motor Accident Claims Tribunal, Bilaspur, Chhattisgarh, in Claim Case No. 32/2006. Vide the impugned award the Tribunal in a proceeding under Section 163A of Motor Vehicles Act has awarded a compensation of Rs.1,74,500/- with interest @ 7% per annum.
2. The MAC No. 1289/2007 is an appeal by the claimants seeking enhancement and MAC No. 188/2008 is an appeal by the Insurance Company assailing the liability. So far as the appeal of the Insurance Company is concerned, undisputedly the policy which was issued in the instant case was a package policy, which covered risk of the pillion rider as per the circular of IRDA. The sole ground which counsel for the Insurance Company has raised is that the salary of the deceased claimed by the claimants was of Rs.5,000/- a month, which makes the annual income to be Rs.60,000/- and the maximum income which of a claimant to fall within the ambit of section 163A is a Rs.40,000/- and therefore the claim case itself was not maintainable.

3. A perusal of the record would show that the Tribunal in the instant case for the purpose of quantifying the compensation has taken the notional income of the deceased of Rs.15,000/- for the purpose of quantifying the compensation and has awarded the compensation of Rs.1,74,500/-.
4. Considering the fact that the Tribunal has taken into consideration the notional income of Rs.15,000/- not even Rs.40,000/- which could have been taken by the Tribunal, this Court is of the opinion, now after 10 years from the date of award no fruitful purpose would be served in interfering with the amount awarded by the Tribunal. The appeal of the Insurance Company therefore stands rejected.
5. So far as the appeal of the claimants is concerned, true it is that the claimants in the instant case has claimed that the income of the deceased was more Rs.5,000/- which by itself shows that the annual income of the deceased was more than Rs.60,000/-, but since there was no sufficient evidence led by the claimants to establish the income part, the Tribunal has accepted the notional income of the deceased at Rs.15,000/- per annum.
6. Though the Hon'ble Supreme Court in the case of ***"Deepal Girishbhai Soni & others v. United India Insurance Co. Ltd. Baroda"* [2004(5) SCC 385]** and this High Court in case of ***"Oriental Insurance Company Limited v. Swatantra Kumar Verma"* [2017(1) TAC 538 (Chhattisgarh)]** has held that when the claimants themselves plea the salary to be more than Rs.40,000/-, the claim would not be maintainable under Section 163A of the Motor Vehicles Act. This Court considering the fact that the Tribunal has taken the income of only Rs.15,000/- for the purpose of quantification of compensation, in the peculiar facts of the case and the award being very old, this Court does not find any strong case made out for enhancing of the compensation awarded as well.
7. The two appeals preferred by the claimants as well as the Insurance Company deserves to be and are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge