

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 784 of 2008**

1. Pila Bai widow of late Shri Babulal, aged about 38 years;
2. Lalit Kumar son of late Shri Babulal, aged about 17 years;
3. Jivan Lal son of late Shri Babulal, aged about 15 years;
4. Ku. Savitri D/o late Shri Babulal, aged about 15 years;

The appellant No. 2 to 5 are minors, through their next friend mother Pila Bai Dahare.

All are presently residing at Ward No.3, Imlibhatha Mahasamund, Tahsil and District Mahasamund (CG)

---- Appellants**Versus**

1. Amar Singh son of Shri Punaram Rawat, aged about 32 years, occupation Driver, resident of village Jadapadar, Police Station Mainpur, Tahsil Gariyaband, District Raipur (CG)
2. Mahendra Sahu son of Shri Loknath Sahu, aged about 30 years, occupation owner of vehicle, resident of village Hardibhatha, Police Station Mainpur, Tahsil Gariyaband, District Raipur (CG)
3. The United India Insurance Company Limited Branch Office Krishna Complex, Kachahari Chowk, Raipur, through Divisional Manager, Divisional Office, Jail Road Kachahari Chowk Raipur (CG) Policy No. 190500/31/2003/03916, Limitation date 04.11.2003 to 03.11.2004

---- Respondents

For Appellants	:	Shri R. K. Pali, Advocate
For Respondents 1 & 2	:	Shri Avinash Chand Sahu, Advocate
For Respondent no.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****25/10/2017**

Present is a claimants' appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation. Challenge in the present appeal is to the award dated 20.02.2007 passed by the Motor Accident Claims Tribunal, Mahasamund (CG) in Claim Case No. 86/2006.

2. Counsel for the appellants submits that it is a case where the deceased while travelling in a Jeep bearing registration No. CG 04 ZD 8843 met with an accident on 30.03.2004 and received grievous injuries to which he succumbed on

05.02.2005. According to the counsel for the appellants, the Tribunal has awarded compensation of only Rs.15,220/- of which Rs.10,220/- is towards medical expenses and Rs.5,000/- is for engagement of an attendant. Counsel for the appellants submits that it is a case where the injury sustained by the deceased from the accident that took place on 30.03.2004 subsequently resulted in his death on 05.02.2005 and therefore it has to be considered as a death case while computing the compensation. But the Tribunal has not properly appreciated this aspect. Thus, prayed for suitable modification of the impugned award and enhancement of the compensation accordingly.

3. Counsel appearing for the respondents particularly respondent no.3, the Insurance Company opposing the appeal submits that it is a case where there is no evidence to show any nexus of the cause of death with the accident or the injury sustained from the accident. She submits that there is a considerable gap between the date of accident and the date of death and there is no proper evidence to show that the deceased was hospitalized or was under continuous treatment from the date of accident till his death to accept the contention put forth by the counsel for the appellants. Thus, prayed for rejection of the appeal.

4. Having considered the contentions put forth by the counsel for the parties and on perusal of the record what is reflected is that undisputedly an accident did take place on 30.03.2004 and the vehicle involved was of respondents 1 & 2 bearing registration No. CG 04 ZD 8843. The vehicle was registered and insured as a private vehicle. There is sufficient evidence which has been brought on record to show that the vehicle at the time of accident was being used as a commercial vehicle. The Tribunal has applying the principle of pay and recovery decided the case and ordered the Insurance Company to pay the amount of compensation and recover the same from the owner.

5. The owner and the driver or the Insurance Company have not challenged the impugned award regarding the liability which has been fastened upon them and as such the finding of the Tribunal of pay and recovery has attained finality.

6. The only issue left for consideration is whether the compensation awarded is just and reasonable or it deserves suitable enhancement.

7. From the record which has come before the Tribunal it appears that the deceased did receive grievous injury in as much as he had received multiple fractures on his right ribs in addition to the other injuries which he had suffered. The doctor has also been examined who has given a report and also deposed before the Court that the cause of death could have been due to the injury sustained by the deceased as there was a possibility of fat accumulate at the place of injury which could lead to the heart attack. The deceased in the instant case died because of heart attack. What cannot be brushed aside is the huge gap between the date of accident and the date of death. There was no sufficient evidence produced before the Tribunal to show the continuous treatment of the deceased from the date of accident till his death. Thus, this Court does not find any illegality so far as the finding of the Tribunal in reaching to the conclusion that there was no direct nexus between the death and the accidental injury sustained by the deceased.

8. However, from the evidence which has come on record it is evident that the deceased was under continuous treatment for six months from the date of accident and during this period, he had not been able to discharge his duties and there was a clear loss of earning capacity during the said period. In addition, he had also undergone a great element of pain and suffering and must have incurred considerable amount during the course of treatment towards engagement of an attendant. The Tribunal has awarded an amount of Rs. 5,000/- towards engagement of an attendant. Considering the duration of treatment which is more than six months this Court is of the opinion that the appellants must have been incurred much more than what has been assessed by the Tribunal and orders for enhancement of the compensation to Rs.15,000/- in stead of Rs.5,000/- towards engagement of attendant. So far as pain and suffering is concerned, considering the age of the deceased and the duration of treatment, this Court quantifies

compensation of Rs.50,000/- towards pain and suffering. Considering the fact that during the said period of six months, the deceased had not been able to earn anything, this Court quantifies the compensation under this head at Rs.20,000/-. Thus, it is ordered that the claimants shall be entitled for an additional amount of Rs.80,000/- in addition to what has already been awarded by the Tribunal. The enhanced amount shall also carry interest @ 6% per annum from the date of application.

9. The appeal thus stands allowed and disposed of.

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