

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1140 of 2012**

1. Heera Lal S/o Santu Dewangan, aged about 27 years, R/o Santoshipara, near Sahu Lakdi Tall, Camp-2, Bhilai, Distt. Durg, C.G.
2. Smt. Kriti Bai W/o Heera Lal Dewangan, aged about 25 years, R/o Santoshipara, near Sahu Lakdi Tall, Camp-2, Bhilai, Distt. Durg, C.G.

---- Appellants**Versus**

1. Rajulal Barle S/o Dukaluram Barle, aged about 22 years, R/o Shardapara, Vijay Nagar, Camp-2, Bhilai, P.S. Chawani, Distt. Durg, C.G. (Driver of the offending truck No. C.G. 07/C/4525)
2. Sanjay Bes S/o B. Bes, R/o Lavkushnagar, Jamul, Distt. Durg, C.G. (Driver of the offending truck No. C.G. 07/C/4525)
3. Shriram General Insurance Company Ltd. Riko Industrial Area, Sitapura, Jaipur, Distt. Jaipur (Rajasthan)

---- Respondents

For Appellants	:	Shri Tarun Dansena, Advocate
For Respondent No.3	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30/08/2017**

This Court also requested Shri Akhand Pratap, Advocate for assisting this Court for disposal of the appeal and who has rendered valuable assistance.

2. The present is an appeal under Section 173 of the Motor Vehicles Act filed by the claimants challenging the award dated 03.08.2012 passed by the 1st Additional Claims Tribunal, Durg in Claim Case No. 177/2011. Vide the impugned award, the Tribunal in a death case of a child aged around 4-5 years has awarded compensation of Rs.52,000/- to the claimants of which Rs.50,000/-

towards no fault liability and Rs.2,000/- towards mental agony and pain and suffering undergone by the claimants.

3. The grievance of the appellants is that the amount awarded by the Tribunal is on the lower side and the same has to be suitably modified. Counsel for the appellants submits that the Hon'ble Supreme Court in the case of **Kishan Gopal and another Vs. Lala and others** reported in **(2014) 1 SCC 244** has held that in the event of death of a child below 10 years, the compensation would be Rs.2 lakhs with a break up of Rs.1,50,000/- for the death of deceased and Rs.50,000/- under the conventional head. Thus, prayed for modification of the impugned award suitably.

4. Counsel for the Insurance Company however opposes the appeal and submits that it is a case where the deceased at the time of accident was less than 5 years and therefore, the amount of compensation awarded by the Tribunal is just and reasonable. Thus, prayed for rejection of the appeal.

5. Having considered the contentions put forth on either side and on perusal of the record what are undisputed are; the accident, the resultant death of the deceased, the age of the deceased being somewhere around 4-5 years at the time of accident, the vehicle involved in the accident and the same also duly insured with respondent no.3.

6. Considering the admitted factual matrix of the case, what has to be now looked into is whether the amount of compensation awarded is proper and just or not.

7. Considering the facts and circumstances of the case and also the fact that the deceased at the time of accident was around 4-5 years of age, this Court is of the opinion that the law laid down by the Supreme Court in the case of **Lata Wadhwa and others Vs. State of Bihar and others** reported in **(2001) 8 SCC 197** which has subsequently also been followed in the judgment relied upon by the counsel for the appellants in the case of **Kishan Gopal (supra)** where in paragraph-36 it has been categorically held as under:

“36. After noting the submission made on behalf of TISCO in Lata Wadhwa case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs.”

8. Applying the said principle of law laid down in the aforesaid two decisions of the Supreme Court, this Court is of the opinion that ends of justice would meet if the compensation awarded to the claimants is enhanced to Rs.2,00,000/- in stead of Rs.52,000/- as awarded by the Tribunal. It is ordered accordingly. From the said amount, Rs.1.5 lakhs would be compensation to the death of the deceased and Rs.50,000/- would be compensation under the conventional head. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

9. The present appeal thus stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE