

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 530 of 2016**

1. Ramji Verma (Patel) S/o Lakhan Lal Verma (Patel), aged about 57 years,
R/o Vill.- Daganiya, Tah. & Thana- Khamhariya, Dist.- Bemetara,
Chhattisgarh
2. Smt. Kunti Bai Verma (Patel) W/o Ramji Verma (Patel), aged about 52 years,
R/o Vill.- Daganiya, Tah. & Thana- Khamhariya, Dist.- Bemetara,
Chhattisgarh

---- Appellants**Versus**

1. Pratap Singh Gond @ Bhophu S/o Ganesh Singh Gond, R/o Village-
Chutuvabhouna, P.S. & Tah. Pali, Dist.- Korba, Chhattisgarh
(Driver of vehicle No. C.G.10, C-1691)
2. Kishor Kumar Agrawal S/o Late Hanuman Prasad Agrawal, R/o behind
Sarda Cofee, Mangla Square, Bilaspur, P.S. Civil Line, Tah. & Dist.-
Bilaspur, Chhattisgarh(Owner of vehicle No. C.G.10, C-1691)
3. The Oriental Insurance Company Limited, through- Divisional Manager,
Branch Office- in front of Rajiv Plaja, near old Bus Stand, Bilaspur, Tah. &
Dist.- Bilaspur, Chhattisgarh(Insurer of vehicle No. C.G.10, C-
1691)

---- Respondents

For Appellant	:	Shri Ravindra Sharma, Advocate
For Respondent no.3	:	Shri Deepak Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11/10/2017**

Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 02.05.2015 passed by the 5th Additional Motor Accident Claims Tribunal, Bilaspur (CG) in Claim Case No. 135/2014 whereby the Tribunal has awarded a compensation of Rs.3,26,000/- with interest @ 6% per annum from the date of application.

2. Counsel for the appellant challenges the impugned award on the ground that the compensation awarded by the Tribunal is on the lower side and the

same deserves for suitable enhancement. He submits that the income of the deceased assessed for quantification of compensation is on the lower side. The Tribunal has also not taken into account the income towards future prospects so also the compensation awarded under the conventional head is unreasonably low in as much as only Rs.20,000/- has been awarded under the conventional head. Lastly it has been contended by the counsel for the appellant that the liability of payment of compensation fastened upon respondents 1 & 2 is also bad in law in as much as the Insurance Company has not been able to prove its case of the driver not having a valid driving licence.

3. Counsel for the Insurance Company, however, opposing the appeal submits that the Insurance Company has led evidence of its witness Shri Surendra Kumar Agrawal who has categorically deposed that the driver of the offending vehicle was not having a valid licence at the time of accident. He submits that in spite of proper service of notice, the respondents 1 & 2 have deliberately not entered appearance before the Trial Court nor have they given the details of the licence that the driver had with which it could be proved that the policy conditions were adhered to. Therefore, the finding of the Tribunal does not warrant any interference and prayed for rejection of the appeal so far as the liability part is concerned. As regards the enhance part, counsel for the appellant submits that since the liability has not fastened upon the Insurance Company, he does not have any objection for the same.

4. Having considered the contentions put forth by the counsel on either side and on perusal of the record, this Court has no hesitation in reaching to the conclusion that the liability part which has been fastened upon the respondents 1 & 2 has rightly been done particularly for the reason that the respondents 1 & 2 in spite of proper service have deliberately not entered appearance before the Trial Court nor have they produced relevant documents pertaining to the licence and other documents of the vehicle involved in the accident. Therefore

an adverse inference can safely be drawn against respondents 1 & 2 and the finding of the Tribunal to that extent does not warrant any interference.

5. So far as the enhancement part is concerned, the factual aspect is that the accident is of November, 2012. The deceased in the instant case was aged around 30 years and he was working as a driver at the time of accident. The Tribunal has assessed income of the deceased at Rs.3,000/- a month. Undisputedly in 2012 even an unskilled labour must have earned more than Rs. 4,500/- a month. The Tribunal for all practical purposes could not have taken the income of the deceased to be less than Rs.4,500/- a month. The award therefore needs to be modified accordingly. It is ordered that for the purpose of quantifying compensation, the income of the deceased to be taken would be Rs.4,500/- in stead of Rs.3,000/- as assessed by the Tribunal. So far as the future prospects is concerned, the law by now is well settled that for a person who died at the age of 30 years, 50% of his monthly income has to be added towards future prospects for quantification of compensation.

6. Accepting Rs.4,500/- as the monthly income if 50% of the same is added towards future prospects, the amount comes to Rs. 6,750/- a month and Rs.81,000/- yearly. If 50% of the said amount is deducted towards personal expenses, since the deceased was a bachelor, the amount would come to Rs.40,500. If Rs.40,500/- is multiplied by applying the multiplier of 17, the amount reaches to Rs.6,88,500/-. It is ordered that the claimants would be entitled for compensation of Rs.6,88,500/- for the loss of dependency in stead of Rs.3,06,000/- as assessed by the Tribunal. Further the claimants shall also be entitled for compensation of a lump sum amount of Rs.1,25,000/- under conventional head in stead of Rs.20,000/- as awarded by the Tribunal in the light of the decision of the Supreme Court in the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54** more particularly for the reason that it is a case where the accident is of the year 2012.

7. Thus, the claimants shall be entitled for a total compensation of Rs.8,13,500/- in stead of Rs.3,26,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal. The liability of payment of compensation shall be upon the respondents 1 & 2 as has been assessed by the Tribunal. The appellants shall be at liberty of getting the compensation amount executed against respondents 1 & 2. In the event of the appellants filing an execution proceeding, it shall be the duty of the concerned Court below to ensure that the execution proceeding reaches its logical conclusion at the earliest so that the claimants are not deprived of their rightful claim .

8. The appeal stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
JUDGE