

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1740 of 2016**

Divisional Manager, H. D. F. C. Ergo General Insurance Company, Chawla Complex, third Floor, Devendra Nagar, Sai Nagar Road, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh(Insurer of Trailer No. C.G.-04-J C-6706)

---- Appellant**Versus**

1. Jahid Ali S/o Late Munowar Ali, aged about 43 years, R/o Street No.19, In Front of Anna Shop, Zone-1, Sector 11, Bhilai Tahsil and District Durg, Chhattisgarh
2. Smt. Shakila Bano W/o Jahid Ali, aged about 35 years, R/o Street No.19, In Front of Anna Shop, Zone-1, Sector 11, Bhilai Tahsil and District Durg, Chhattisgarh
3. Kumari Rubi D/o Jahid Ali, aged about 17 years, Minor Representing through Her Father Respondent No.1 Jahid Ali, S/o Late Munowar Ali, R/o Street No.19, In Front of Anna Shop, Zone-1, Sector 11, Bhilai Tahsil and District Durg, Chhattisgarh(Claimants)
4. Ramnaresh Gautam S/o Shri Jaishankar Gautam, R/o Mahuvagaon, Police Station Dharsiva, Distt. Raipur, Chhattisgarh(Driver of Trailer No. C.G.-04-J C-6706)
5. Vikky Minerals Private Limited Vaseliy Line, Nehru Nagar, Raipur, Chhattisgarh(Owner of Trailer No. C.G.-04-J C-6706)

---- Respondents

For Appellant	:	Shri Rotashav Singh, Advocate
For Respondents 4 to 5	:	Ms. Shipra Biswas, Advocate

Misc. Appeal (C) No. 1741 of 2016

Divisional Manager, H. D. F. C. Ergo General Insurance Company Chawla Complex, Third Floor, Devendra Nagar, Sai Nagar Road, Raipur, Police Station Devendra Nagar, Civil & Revenue District Raipur, Chhattisgarh(Insurer of Trailer No. C.G.-04-J C-6706)

---- Appellant

Versus

1. Hyder Ali S/o Late Sabit Ali, aged about 42 years, R/o Street No.19, Quarter No.04/e, Zone-1, Sector 11, Bhilai Tahsil and Distt. Durg, Chhattisgarh
2. Smt. Tairunnisha W/o Hyder Ali, aged about 35 years, R/o Street No.19, Quarter No.04/e, Zone-1, Sector 11, Bhilai Tahsil and Distt. Durg, Chhattisgarh
3. Akram Ali S/o Hyder Ali, aged about 15 years, Minor Representing through Father Respondent No.1 Hyder Ali, S/o Sabit Ali, R/o Street No.19, Quarter No.04/e, Zone-1, Sector 11, Bhilai Tahsil and Distt. Durg, Chhattisgarh
4. Ku. Shahnaz D/o Hyder Ali, aged about 17 years, Minor Representing through Father Respondent No.1 Hyder Ali, S/o Sabit Ali, R/o Street No.19, Quarter No.04/e, Zone-1, Sector 11, Bhilai Tahsil and Distt. Durg, Chhattisgarh
5. Ku. Nazrin D/o Hyder Ali, aged about 12 years, Minor Representing through Father Respondent No.1 Hyder Ali, S/o Sabit Ali, R/o Street No.19, Quarter No.04/e, Zone-1, Sector 11, Bhilai Tahsil and Distt. Durg, Chhattisgarh
6. Ku. Shama D/o Hyder Ali, aged about 10 years, Minor Representing through Father Respondent No.1 Hyder Ali, S/o Sabit Ali, R/o Street No.19, Quarter No.04/e, Zone-1, Sector 11, Bhilai Tahsil and Distt. Durg, Chhattisgarh
7. Ku. Jasmin D/o Hyder Ali, aged about 8 years, Minor Representing through Father Respondent No.1 Hyder Ali, S/o Sabit Ali, R/o Street No.19, Quarter No.04/e, Zone-1, Sector 11, Bhilai Tahsil and Distt. Durg, Chhattisgarh
8. Ku. Naziya D/o Hyder Ali, aged about 2 and 1/2 Years, Minor Representing through Father Respondent No.1 Hyder Ali, S/o Sabit Ali, R/o Street No.19, Quarter No.04/e, Zone-1, Sector 11, Bhilai Tahsil and Distt. Durg, Chhattisgarh(Claimants)
9. Ramnaresh Gautam S/o Shri Jaishankar Gautam, R/o Mahuvagaon, Police Station Dharsiva, Distt. Raipur, Chhattisgarh(Driver of Trailer No. C.G.-04-J C-6706)

10. Vikky Minerals Private Limited Vaseliy Line, Nehru Nagar, Raipur,
Chhattisgarh(Owner of Trailer No. C.G.-04-J C-6706)

---- Respondents

For Appellant	:	Shri Rotashav Singh, Advocate
For Respondents 9 to 10	:	Ms. Shipra Biswas, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

18/07/2017

These are the two appeals filed by the Insurance Company assailing the award dated 22.09.2016 passed by the 6th Additional Motor Accident Claims Tribunal, Durg in Claim Case No.98/2014 and Claim Case No. 97 of 2014.

2. The facts of the case in nutshell is that deceased Md. Samir in MAC No. 1740/16 and Kaushar Ali in MAC No. 1741/16 while travelling in their Pickup Van (Chhota Hathi) bearing registration No. CG07 CA 6052 on 24.10.2013, when they were reached near Siltara, District Raipur, they were dashed by a Trailer bearing Registration No. CG 04JC 6706 coming from the opposite direction as result of the said accident both of them died on the spot. The family members of both the deceased filed claim applications under Section 166 of the Motor Vehicles Act before the Tribunal seeking for compensation.

3. The Tribunal after considering the evidences which have come on record vide impugned award dated 22.09.2016 allowed the application and granted compensation of Rs.12,97,000/- each to the family members of both the deceased.

4. It is this judgment which has been assailed by the Insurance Company in the present two appeals.

5. The contention of the counsel for the appellant is that the accident arose because of the contributory negligence on the part of the deceased in both the

cases. Counsel for the appellant relies upon the statement of the driver of the offending vehicle in this regard. He further challenges the calculation made under the head of future prospects in view of the decision of the Supreme Court in the case of Chikkamma and another Vs. Parvathamma and another in Civil Appeal No(s). 3409 of 2017 dated 28.02.2017. The other ground which the counsel for the appellant has raised is that the Tribunal has committed an error of law in applying the multiplier of 18 while calculating compensation in view of the earlier decision of the Supreme Court in the case of Municipal Corporation of Greater Bombay Vs. Shi Laxman iyer and another in Appeal (Civil) No. 8424/2003 decided on 27.10.2003. He also relied upon the judgment of this High Court in the case of Rukmani Bai and Anr. Vs. Ram Vishal Sharma and Ors. reported in 2008 (3) MPHT 11 CG. Thus, prayed for setting aside of the impugned award and for discharging of the Insurance Company from the liability of payment of compensation, if not at least applying the principle of contributory negligence and the award may be reduced suitably.

6. Per contra, counsel appearing for the owner and driver opposes the appeal and submits that there is no scope of interference with the impugned award as the finding of the Tribunal is based on the evidence which has come on record. Thus, prayed for rejection of the appeal.

7. Having considering the rival contentions put forth on either side and on perusal of the record the undisputed fact of the case is that the deceased in both the appeal were travelling in the same Pickup. The deceased in both the cases were aged around 19-20 years. The offending vehicle belonged to respondents 4 & 5 in MAC No.1740/16. The vehicle was insured with the present appellant. The appellant does not dispute the notional income of Rs.6,000/- which has been taken by the Tribunal for quantifying the compensation.

8. In the light of the undisputed factual position, all that is left to be decided is whether the grounds raised by the appellant so far as the contributory negligence,

the multiplier applied and the quantification under the head of future prospects are proper, legal and justified.

9. So far as the contributory negligence is concerned, the only reliance which has been made by the appellant is the statement of the driver of the offending vehicle. The said statement of the driver cannot be given weightage for the simple reason that he is an accused in the criminal case in the said accident. Further since he was an accused in the said case, the obvious defence which he would raise is that he was not at fault. Therefore, the statement of the said driver cannot be relied upon and the contention of the Insurance Company in this regard thus stands negated.

10. So far as the compensation under the head of future prospects granted by the Tribunal is concerned, this issue is no longer res integra considering the series of judgments of the Supreme Court right from the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in (2009) **6 SCC 121** till the case of **Rajesh and Others vs. Rajbir Singh and others** reported in (2013) **9 SCC 54** wherein it has been almost settled that the compensation under the head of future prospects shall have be taken into consideration for the purpose of quantifying the compensation.

11. So far as the issue of multiplier of 18 which has been taken by the Tribunal is concerned, the judgment cited by the counsel for the appellant to support their contention stating that the multiplier should be that of 10 as the claimants are the parents in both the cases, the same cannot be accepted for the simple reason that much water has been flown since the decision relied upon by the appellant was pronounced. The said issue in the present cases would be governed by the ratio of law laid down by the Supreme Court in the case of Sarla Verma and the subsequent decisions. In the factual matrix of the case, the multiplier of would be 18 and therefore, the Tribunal cannot be at fault in applying the multiplier of 18.

12. For the aforesaid reasons, this Court does not find any strong case made out by the Insurance Company calling for interference with the impugned award. Thus, both the appeals being devoid of merits deserve to be and are accordingly dismissed.

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