**NAFR**

**HIGH COURT of CHHATTISGARH, BILASPUR**

**MAC No. 918 of 2009**

1. Ram Milan S/o late Radhram, aged 45 years, R/ village Siroli, Post Kathotia, PS & Tehsil Manendragarh, Distt. Korea (CG).
2. Malti Bai W/o Ram Milan, R/o village Siroli, Post Kathotia, PS & Tehsil Manendragarh, Distt. Korea (CG).

**---- Appellants**

**Versus**

1. Bhaiyalal Rajwade S/o Jidhelal, aged 30 years, R/o village Siroli, Post Kathotia, PS & Tehsil Manendragarh, Distt. Korea (CG).
2. Ramawtar S/o Bramhalal, aged 30 years, R/o village Siroli, Post Kathotia, PS & Tehsil Manendragarh, Distt. Korea (CG).
3. The New India Assurance Co. Ltd. Branch Office Korba, Distt. Korba (CG).

**---- Respondents**

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| For Appellants | : | Shri Akhand Pratap, Advocate. |
| For respondents No.1&2 | : | Shri Akash Pandey, Advocate. |
| For respondents No.3 | : | Shri Prafull Bhrata and Shri Deepak Gupta, Advocate. |

**SB: Hon'ble Shri Justice P. Sam Koshy**

**Order On Board**

**14/09/2017**

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation against the award dated 21.11.2008 passed by the 1st Additional Motor Accident Claims Tribunal, Manendragarh (Koriya) (in short, the Tribunal) in Claim Case No.45/2006. Vide the impugned award, the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act, has awarded compensation to the tune of Rs.1,57,000/- along with interest @ 9 percent per annum from the date of application. It is this award which is under challenge in this appeal by the claimants seeking enhancement.
2. The respondents No.1&2, owner and driver of the offending vehicle at

the relevant point of time have also filed cross objection under Order 41 Rule 22 CPC assailing the award, inasmuch as, exonerating the insurance company and fastening the liability of payment of compensation upon the owner and driver. For convenience, we shall first deal with the cross objection of the owner and the driver.

3. Learned counsel for the respondents No.1&2, owner and driver, in pursuance to their cross objection submitted that the insurance company has not led any evidence on their part to establish that there was a breach of policy condition with which the liability could have been fastened upon the owner. According to him, it was a specific pleading in their written statement before the Tribunal that the vehicle which was insured for agriculture purpose was being used for agriculture purpose and it was incorrect to hold that the vehicle was being used for commercial purpose.

4. However, perusal of records would show that the claimants in support of their contention so far as the accident resulted from the use of offending Tractor-Trolley, had led evidence of one Shyam Lal who was a worker working along with the deceased at the time of accident and who was also travelling in the same Tractor-Trolley. In fact this witness Shyam Lal is an eyewitness to the incident. He has specifically deposed before the Tribunal that the Tractor was being used for commercial purpose since long and that at the relevant point of time it was being used for carrying Sand for construction of house of one Raju and that in the past also it was being used for carrying materials for the construction of road etc. This evidence before the

Tribunal by the eyewitness and a worker of the owner himself clearly establishes the use of Tractor-Trolley for a purpose other than that for which it was insured. Thus, the cross objection filed by the respondents No.1&2, driver and owner being devoid of merit deserves to be and is accordingly rejected.

5. So far as the appeal by the claimants seeking for enhancement of compensation is concerned, counsel for the appellants submits that it is a case where the claimants had pleaded that deceased at the relevant point of time was earning Rs.3000/- a month whereas, the Tribunal has not accepted the same and has taken notional income of Rs.15000/- yearly for the purpose of quantifying the compensation. This, in the opinion of this court is unreasonable for the reason that it is a case where the accident occurred in May, 2006. Even if the minimum income is taken into consideration, the yearly income of the deceased would not had been less than Rs.24,000/- i.e. Rs.2000/- per month and as such for all practical purpose the notional income of the deceased ought to have been taken at Rs.24,000/-instead of Rs.15,000/- as assessed by the Tribunal. It is ordered accordingly.

6. In addition, this court is of the opinion that the multiplier applied in the instant case of 15 also is erroneous as in view of judgment of Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. 2009 (6) SCC 121, the multiplier applicable in the instant case would be 18 as the deceased was 20 years of age. Further, this court is also of the opinion that deduction towards personal expenses in the present case would be 50 percent and not

1/3rd as assessed by the Tribunal considering the fact the deceased was a bachelor aged about 20 years and the claimants being the parent.

7. It is further found that the Tribunal has not taken into account the future income part while quantifying the compensation. Considering the age of the deceased, he would be entitled for 50 percent future income.

8. If Rs.24,000/- is taken as notional income of the deceased and if we add 50 percent of it towards future prospects, it brings to Rs.36,000/- of which if 50% is deducted towards personal expenses, the net income would reach to Rs.18,000/-. If this amount is multiplied by applying the multiplier of 18, the total amount would reach to Rs.3,24,000/-. It is ordered accordingly that the claimants shall be entitled for compensation under the head of loss of dependency at Rs.3,24,000/- instead of Rs.1,50,000/- as awarded by the Tribunal. Remaining part of the award shall remain intact.

9. The enhanced amount of compensation shall also carry interest at the same rate as has been ordered by the Tribunal.

10. The appeal of the appellants-claimants thus stands allowed and the cross objection of the respondents No.1&2 stands rejected.

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

inder