

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1589 of 2008**

1. Ram Preet Bharti S/o Shri Nepal Bharti, aged about 46 years
2. Smt. Chinta Devi Bharti W/o Ram Preet Bharti, aged about 40 years

Both are residents of village Anjora, Police Chowki Anjora, Police Station Pulgaon, District Durg (CG)

---- Appellant**Versus**

Maninder Singh S/o Shri Jaswant Singh, R/o House No. 1210, Sector 6, Nanaknagar (Jammu)

---- Respondent

For Appellants	:	Shri Malay Ku. Bhaduri, Advocate
For Respondent	:	Shri Raja Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****07/11/2017**

Present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 31.07.2008 passed by 11th Additional Motor Accident Claims Tribunal (FTC), Durg (CG) in Claim Case No. 106 of 2007. Vide the impugned award, the Tribunal has awarded a compensation of Rs.21,139/- with interest @ 8% per annum from the date of application.

2. Present is an appeal by the claimants seeking for enhancement of compensation.

3. The contention of the counsel for the claimants is that the accident in the instant case occurred on 31.12.2006 while their son Awadhesh Kumar Bharti was going towards Bus stand Anjora on his bicycle was hit by the motorcycle bearing registration No. JK02 VI/3409 which was being driven by one Ankit

Kesar. As a result of the accident, Ankit Kesar died on the spot and Awadhesh Kumar Bharti sustained grievous injuries. Initially Awadhesh Kumar was admitted at Sector-9 hospital, Bhilai thereafter the claimants got him discharged from the said hospital and took him to Medical College, Raipur wherein during the course of treatment he died on 26.02.2007.

4. Contention of the counsel for the appellants is that Awadhesh Kumar died arising out of the said accident and therefore it should have been treated as a death case and the compensation should have been awarded accordingly. The Tribunal having not done so, the impugned award deserves to be modified and the compensation deserves to be enhanced accordingly. Counsel for the claimants submits that the Tribunal has awarded only a compensation of Rs.21,139/- which is unreasonably low and therefore it deserves to be suitably enhanced. He further submits that the documents pertaining to the treatment which the deceased Awadhesh had undergone at Bhilai Sector-9 hospital as well as at Medical College Raipur would give sufficient strength to the claim of the claimants of the death of Awadhesh having occurred because of the accident that took place on 31.12.2006.

5. Counsel appearing for the respondent opposing the appeal submits that it is a case where no medical evidence has been led by the claimants with which it could be established that the death of Awadhesh occurred because of the accidental injuries. It is the contention of the counsel for the respondent that there was no direct nexus between the injury sustained on 31.12.2006 and the death which took place on 26.02.2007. The postmortem report also does not show sufficient indication in this regard. He submits that it is a case where the injured Awadhesh was discharged from the Sector-9 hospital, Bhilai and it is only thereafter he was admitted at Medical College, Raipur which shows

that the nature of accident was not so grave with which he could have died because of the accidental injury that occurred on 31.12.2006.

6. On perusal of the record particularly the documents exhibited before the Tribunal this Court finds that there is a continuous chain of events which has been established before the Tribunal supported with documents in respect of the treatment which the injured Awadhesh had undergone during the intervening period. Deceased Awadhesh was a 15 years old boy and the treatment started on 31.12.2006 which continued till his death on 26.02.2007. Though the treatment might have occurred at two different places but there is sufficient indication and proof with which strong inference can be drawn, of there being a direct nexus between the injury sustained and the resultant death occurred on 26.02.2007. Moreover, the postmortem report also shows that the body had received injury marks and there were also stitch wounds found on the body. Further, the documents pertaining to the treatment at Sector 9 hospital also shows that there was grievous head injury detected on the body of Awadhesh. All these facts force this Court to reach to the conclusion that the death of Awadhesh was as a result of the accidental injury which took place on 31.12.2006 and that the claimants would have therefore been entitled for suitable compensation on the death of Awadhesh, a 15 years young boy.

7. Another aspect which cannot be lost sight in the instant case is that true it is that the claimants have not been able to lead medical evidence in support of their contention but the record which has been produced before this Court leads sufficient proof and strength to the claim case put forth by the claimants to establish the accident, the resultant injury and the death of their son Awadhesh Kumar.

8. At this juncture, it would also be trite to mention the fact that the respondent in the instant case happens to be the registered owner of the motorcycle involved in the accident. He was not driving the said motorcycle at the time of accident. It so happens that Ankit Kesar took the motorcycle from the respondent and while he was driving the said motorcycle had collided with Awadhesh who was going on his bicycle giving rise to the injuries to both the persons. The respondent in the instant case, except for the fact that he is a registered owner, is not directly or indirectly attributed for the accident to have occurred.

9. Keeping in view all the aforesaid facts and circumstances of the case when we proceed to decide the compensation payable to the claimants, this Court feels it proper to accept the principle laid down by the Supreme Court in the case of **Lata Wadhwa and Ors. Vs. State of Bihar and Ors.** reported in **(2001) 8 SCC 197** and quantifies the compensation accepting the notional income at Rs.15,000/- annually. The compensation of Rs.1,50,000/- is awarded towards loss of dependency and Rs.50,000/- under the conventional head. Thus, the total compensation payable to the claimants shall be Rs.2,00,000/- in stead of Rs.21,139/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

10. The appeal thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
JUDGE