

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1494 of 2007**

The Oriental Insurance Company Limited, regional office Patna, through the Branch Manager, the Oriental Insurance Company Limited, R.O. Patna (Bihar), Raj Hospital Complex, 57-A, Main Road, Ranchi (Jharkhand) through the Divisional Manager, the Oriental Insurance Company Limited, Korba, Geetanjali Bhawan, Main Road (CG)

---- Appellant**Versus**

1. Smt. Manju Saxena widow of late Mahesh Chandra Saxena, aged about 49 years
 2. Vikram Saxena S/o late Mahesh Chandra Saxena, aged about 26 years
 3. Vivek Saxena S/o late Mahesh Chandra Saxena, aged about 24 years
 4. Vikrant Saxena S/o late Mahesh Chandra Saxena, aged about 22 years
- All by caste - Kayasth, R/o H.I.G. -131, Maharana Pratap Nagar, Korba, Tehsil & District - Korba (C.G.) { Claimants}
5. Mohammed Maqbul Ansari S/o Shri Abdul Sakur Ansari, R/o Tatkundo, P.S. - Bhandar, District - Ranchi (Jharkhand) { Driver of vehicle}
 6. Javed Akhtar S/o Shri late Yakub Main, R/o Bazar Tand, P.S. - Itki, District - Ranchi (Jharkhand)

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate
For Respondents	:	Shri R. S. Baghel, Advocate

Misc. Appeal (C) No. 1495 of 2007

The Oriental Insurance Company Limited, regional office Patna, through the Branch Manager, the Oriental Insurance Company Limited, R.O. Patna (Bihar), Raj Hospital Complex, 57-A, Main Road, Ranchi (Jharkhand) through the Divisional Manager, the Oriental Insurance Company Limited, Korba, Geetanjali Bhawan, Main Road (CG)

---- Appellant

Vs

1. Vikrant Saxena S/o late Mahesh Chandra Saxena, aged about 22 years, caste - Kayasth, R/o H.I.G. -131, Maharana Pratap Nagar, Korba, Tehsil & District - Korba (C.G.) { Claimants}
2. Mohammed Maqbul Ansari S/o Shri Abdul Sakur Ansari, R/o Tatkundo, P.S. - Bhandar, District - Ranchi (Jharkhand)
3. Javed Akhtar S/o Shri late Yakub Main, R/o Bazar Tand, P.S. - Itki, District - Ranchi (Jharkhand)
4. National Insurance Company Ltd. Ranchi, Jamshedpur, through the Divisional Manager, National Insurance Company Ltd. Korba, District - Korba (C.G.) { Insurer of Santro Car }

---- Respondents

For Appellant	:	Shri Ghanshyam Patel, Advocate
For Respondent No. 1	:	Shri R. S. Baghel, Advocate
For Respondent no. 4	:	Shri Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****02/11/2017**

These are two appeals by the Insurance Company under Section 173 of the Motor Vehicles Act challenging the award dated 31.08.2007 passed by the Motor Accident Claims Tribunal, Korba (CG) in Claim Case Nos. 242/07 and 241/07.

2. MAC No. 1494/07 arises out of Claim Case No. 242/07 whereby in a death case the compensation awarded is Rs.22,52,500/-. MAC No. 1495/07 arises out of Claim Case No.241/07 whereby in an injury case the compensation awarded is Rs.5,32,760/-.

3. So far as the appeal in death case is concerned, there are two grounds raised by the Insurance Company challenging the impugned award. First ground is that there was an element of contributory negligence on the part of

the deceased for the accident to occur and therefore, the liability should have been suitably apportioned between the deceased and the offending vehicle. The second ground of challenge is the quantum of compensation awarded by the Tribunal. According to the counsel for the Insurance Company, the service of the deceased left at the time of accident was around 3 years 7 months and therefore he would have got salary for 3 years 7 months in his career. He submits that the computation of compensation by applying the multiplier of 8 by the Tribunal is not proper and that it should have been only taking into consideration the service left.

4. So far as the contributory negligence is concerned, there is no evidence which has been brought on record and which could be taken note by this Court to substantiate or accept the contention raised by the Insurance Company. In the absence of any evidence, the said ground of the Insurance Company deserves to be and is accordingly negated. So far as the quantum is concerned, this Court is of the opinion that the said ground would not be sustainable for the reason that the calculation of compensation made by the Tribunal cannot be faulted with as it has been done taking into consideration the principles laid down by the Supreme Court in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. Merely because the deceased was aged around 57 years and only 3 ½ years service was left would not by itself be a factor for determining the compensation considering the length of service left, as there is all possibility the deceased must have got some employment beyond his retirement which cannot be brushed aside. These facts have been taken care of in the judgment of the Supreme Court in the case of Sarla Verma and therefore, this Court does not find any strong case for interfering with the impugned award.

5. So far as the case of injured Vikrant Saxena is concerned, the only ground raised is the quantum assessed by the Tribunal. According to the counsel for the Insurance Company, the injured Vikrant was admittedly a student of engineering college and the income assessed by the Tribunal is Rs.6,000/- which is without any basis. He submits that the disability part assessed by the Tribunal of 24% is on the higher side and the reasons given also do not have any justification.

6. However, on perusal of the record what is undisputed is the accident and the resultant injury sustained by injured Vikrant Saxena. He had received grievous injuries on his right ankle and the injury part has been proved by AW-7 Dr. R. K. Thawait. The disability certificate has been issued by the District Medical Board wherein they have assessed the disability as 24%.

7. Considering the nature of injury sustained and the nature of treatment which was undertaken by the injured Vikrant Saxena, this Court has no hesitation in reaching to the conclusion that the calculation so made does not warrant any interference.

8. Thus, both the appeal preferred by the Insurance Company stand dismissed.

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