

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 665 of 2015

1. Ganpat Dewangan S/o Late Shri Shivnath Dewangan Aged About 52 Years R/o Kotra Road, "Jaihind Gali" Raigarh, P/s Kotra Road Raigarh, Tahsil And District Raigarh Chhattisgarh.
2. Smt. Asharfi Devi W/o Shri Ganpat Dewangan Aged About 44 Years R/o Kotra Road, "Jaihind Gali" Raigarh, P/s Kotra Road Raigarh, Tahsil And District Raigarh Chhattisgarh
3. Manoj Dewangan S/o Ganpat Dewangan Aged About 20 Years R/o Kotra Road, "Jaihind Gali" Raigarh, P/s Kotra Road Raigarh, Tahsil And District Raigarh Chhattisgarh
4. Yogesh Dewangan S/o Ganpat Dewangan Aged About 18 Years R/o Kotra Road, "Jaihind Gali" Raigarh, P/s Kotra Road Raigarh, Tahsil And District Raigarh Chhattisgarh
5. Minor Pooja Dewangan D/o Ganpat Dewangan Aged About 14 Years Minor Through Father S/o Late Shri Shivnath Dewangan R/o Kotra Road, "Jaihind Gali" Raigarh, P/s Kotra Road Raigarh, Tahsil And District Raigarh Chhattisgarh
6. Minor Sooraj Dewangan S/o Ganpat Dewangan Aged About 8 Years Minor Through Father S/o Late Shri Shivnath Dewangan R/o Kotra Road, "Jaihind Gali" Raigarh, P/s Kotra Road Raigarh, Tahsil And District Raigarh Chhattisgarh.

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Versus

1. Mohammad Hafiz S/o Mohammad Rafiq Aged About 40 Years R/o Behind Ganj, Kharsia, P.S. And Tahsil Kharsia, District

Raigarh Chhattisgarh

2. Rajesh Kumar Chandwani S/o B.R. Chandwani Aged About 43 Years R/o Sindhi Colony Champa District Champa Janjgir Chhattisgarh
3. National Insurance Co. Ltd. Business Centre Handi Chowk, Raigarh, Tahsil And District Raigarh Chhattisgarh

---- Respondents

For the appellants	: Shri Abhishek Saraf, Advocate
For the Respondent No.3	: Shri G.V.K. Rao, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

24/10/2017

1. This appeal is for enhancement of the compensation by the claimants, who are parents, brothers and sister of deceased, namely, Ajay Dewangan, is directed against the award dated 12.01.2015, passed by the Motor Accident Claims Tribunal, Raigarh, District – Raigarh, Chhattisgarh (for short "the Tribunal") in Claim Case No. 79 of 2013.
2. The facts of the case are that deceased – Ajay Dewangan, aged about 11 years died in a road accident on 19.05.2013 on account of rash and negligent driving of the motor vehicle - Hyundai Car bearing registration No. C.G.-11/C - 4241, by respondent No.1. The

registered owner of the vehicle was respondent No.2 and respondent No.3 was the insurer of the said vehicle. The claimants filed a claim petition claiming compensation, which was heard and decided by the impugned award and the Tribunal awarded compensation of Rs.1,05,000/- only. Hence, this appeal.

3. Learned counsel for the appellants submits that the Tribunal has disregarded the principles laid down in **Kishan Gopal and Another vs. Lala and Others** reported in **(2014) 1 SCC 244** and **Lata Wadhwa and Others vs. State of Bihar and Others** reported in **(2001) 8 SCC 197**. It is submitted that although the deceased - child was 11 years old, he was a brilliant student and had a bright future and he could have substantially contributed to his family in future. The learned Tribunal without considering the evidence produced before it, has awarded a lump sum compensation of Rs.1,00,000/- and meager amount of Rs.5,000/- towards funeral expenses, whereas the claim was made for Rs.7,10,000/-. Hence, it is prayed that the compensation awarded by the learned Tribunal may be enhanced suitably by this Court.
4. Learned counsel for respondent No.3 submits that learned Tribunal has awarded just and proper compensation to the appellants. It is apparently clear that the deceased was 11-years old child and had no earning of himself. It is submitted that he was a burden on his parents and it is not certain that he may have contributed to the family. As regards future contribution, that is totally uncertain which

cannot be taken into account for enhancement of compensation. Hence, it is prayed that the appeal may be dismissed.

5. Heard learned counsel for both the parties and perused the documents on record of the Tribunal.
6. The only finding of the impugned judgment which is under challenge is with regard to assessment of the compensation, it is not necessary to go into other details of the case.
7. In **Kishan Gopal and Another vs. Lala and Others** (supra) Hon'ble Supreme Court has relied upon the judgment in **Lata Wadhwa and Another vs. State of Bihar and Others** (supra) wherein it was held that in case of a death of a child, the contribution of such child to the family should be assessed notionally at Rs.12,000/- per annum and the multiplier should be selected taking into consideration the age of the father of the deceased. In **Kishan Gopal and Another (Supra)**, the deceased child was 10 years old and he was assisting his parents in their agricultural operation. On this basis, the contribution of the child was assessed at Rs.30,000/- per annum.
8. In **Lata Wadhwa** (supra), the same principle was applied. In that case, the deceased were the children of the employees and were studying between Class 6 to 10. Taking into consideration this fact,

that one child of employee was entitled to get employment in the company, hence, the income taken into consideration was Rs.24,000/- per annum. Thus, the assessment of compensation in each case would be different by applying the same principle.

9. In this case, the deceased was a student of Class VI. His prospect for getting an employment or not cannot be ascertained at this stage. As per the evidence on record, father of the deceased was a labour in some factory and earning Rs.3,000/- per month. Hence, the prospect for the deceased which can be ascertained at this stage is that he could have followed the occupation of his father. In such a case, the prospects of future earning of the deceased could be taken at the most at Rs.24,000/- per annum. The age of the father of the deceased, appellant No.1–Ganpat Dewangan as mentioned in the claim application is 52 years. Hence, taking into consideration this age and as per the guidelines issued by the Hon'ble Supreme Court in case of ***Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation and Another***, reported in **(2009) 6 Supreme Court Cases 121**, the appropriate multiplier would be 11 in this case. Therefore, by multiplying Rs.24,000/- with the multiplier of 11, the total compensation works out to Rs.2,64,000/- towards the loss of earning. Apart from that, the compensation awarded for funeral expenses is on the lower side which is enhanced to Rs.20,000/-.

10. Accordingly, the appeal is allowed in part. The award is accordingly enhanced from Rs. 1,05,000/- to Rs. 2,84,000/- (Rs. 2,64,000/- + Rs. 20,000/-). The Respondents shall pay the amount of compensation jointly and severally within a period of 60 days from the date of this judgment. On failure of the Respondents in payment of compensation awarded, interest @ 9% shall be chargeable from the date of this judgment till its realization. Compensation awarded by the Tribunal below, if paid, shall be adjustable in payment of compensation awarded by this Court.
11. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
Judge