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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 89 of 2017

- Magma H. D. I. General Insurance Company Ltd. 5th Floor, Dainik Bhaskar Press Complex, Rajbandha Maidan, Police Station Maudahapara, Civil And Revenue District Raipur, Chhattisgarh (Insurer Of Vehicle Registration No. O R-15-Q-7328)

---- Appellant

Versus

1. Smt. Tulsibai Wd/o Late Hiralal Satnami, Aged About 37 Years R/o Village- Biromal, Tahsil Nuwapada, District Nuwapada (Odisha)
2. Ku. Nokhbai D/o Late Hiralal Satnami, Aged About 15 Years Minor And Representing Through Mother Res. No.1 Smt. Tulsibai Satnami, R/o Village- Biromal, Tahsil Nuwapada, District Nuwapada (Odisha)
3. Nokram S/o Late Hiralal Satnami, Aged About 15 Years Minor And Representing Through Mother Res. No.1 Smt. Tulsibai Satnami, R/o Village- Biromal, Tahsil Nuwapada, District Nuwapada (Odisha)
4. Ku. Holika D/o Late Hiralal Satnami, Aged About 13 Years Minor And Representing Through Mother Res. No.1 Smt. Tulsibai Satnami, R/o Village- Biromal, Tahsil Nuwapada, District Nuwapada (Odisha)
5. Ku. Shyambai D/o Late Hiralal Satnami, Aged About 11 Years Minor And Representing Through Mother Res. No.1 Smt. Tulsibai Satnami, R/o Village- Biromal, Tahsil Nuwapada, District Nuwapada (Odisha)
6. Ku. Jamoti D/o Late Hiralal Satnami, Aged About 4 Years Minor And Representing Through Mother Res. No.1 Smt. Tulsibai Satnami, R/o Village- Biromal, Tahsil Nuwapada, District Nuwapada (Odisha)
7. Jagatram Satnami S/o Late Mangla Satnami, Aged About 70 Years R/o Village- Biromal, Tahsil Nuwapada, District Nuwapada (Odisha)
8. Dular Bai W/o Jagatram, Aged About 65 Years R/o Village- Biromal, Tahsil Nuwapada, District Nuwapada (Odisha)(Claimants)
9. Ashok Banchhor S/o Chaitram Banchhor, R/o Shardapur, Police Station Kantabhanji, District Balangir (Odisha)(Driver Of Vehicle Registration No. O R-15-Q-7328)
10. Chhatra Putel S/o Bachchho Putel, Aged About 45 Years R/o Sargiguda, Police Station Kantabhanji, District Balangir (Odisha)(Owner Of Vehicle Registration No. O R-15-Q-7328)

---- Respondents

For Appellant	–	Shri Shokie Yadav, Advocate.
For Respondents	–	None present.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18-01-2017

The present appeal under Section 173 of the Motor Vehicles Act,

1988 has been filed by the Insurance Company assailing the award dated 27.10.2016 passed Motor Claim Case No.115/2015. Vide the said award, the learned Addl. Motor Accident Claims Tribunal, in the proceedings under Sections 166 and 140 of the Motor Vehicles Act filed at the instance of respondents 1 to 8, the claimants before the Court below, have allowed an amount of Rs.15,31,820/- as compensation jointly and severally to be paid by owner and insurance company.

2. The present appeal has been challenged by the insurance company only on the quantum of compensation awarded. Assailing the finding, counsel for the appellant submits that the finding given by the Tribunal is erroneous to the extent that future rise in income of the deceased to the extent of 30% which has been taken by the Tribunal is bad in law there is no basis or document has been produced in this regard by the claimants to substantiate the future rise in income.

3. Perusal of the evidence which comes on record clearly shows that deceased Hiralal Satnami was a skilled carpenter. Though he was a skilled labour, the Tribunal has taken income at Rs.157/- per day and monthly Rs.4710/- for the purpose of calculating compensation. On this the Court below has added 30% as future rise in income which the deceased would have earned had he not died in due course of the time. It is anybody's guess that a skilled labour draws much more wages as on the date than what has been assessed by the Tribunal while awarding compensation. Further what is relevant is that it is an admitted fact that the wages of the labours both skilled and unskilled gets enhanced periodically and in the instant case the deceased who was a skilled carpenter would have also got much more than what he was getting at

the time of the accident and in the given facts if the Tribunal accepts 30% rise in future income for the purpose of calculating compensation payable to the claimants, it cannot be said to be exorbitant or on higher side. Neither can it be said to be contrary to the evidence for the purpose of compensation. So far as other ground which has been raised by the appellant in respect of absence of any eye witness to establish that respondent No.9 was driving the offending vehicle at the time of the accident is concerned, the finding of fact which has been arrived at by the the Court below and further the criminal case which was also registered against respondent No.9 is sufficient for drawing an inference that it was respondent No.9 who was driving the vehicle at the time of accident.

4. The law so far as future rise of income is concerned and taking the same for the purpose of calculating compensation by now stands well established in view of the law laid down by the Supreme Court in the case of **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and Another** [2009 (6) SCC 121] and **Rajesh and Others vs. Rajbir Singh and others** [2013 (9)SCC 54].

5. Thus, in the overall facts and circumstances stated in the preceding paragraphs and also keeping in view the judgments of the Supreme Court quoted above, this Court does not find any merits in the appeal of the Insurance Company and the appeal deserves to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE