NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 868 of 2014

- Subhash Chandra Nayak S/o Late Somari Nayak Aged About 58 Years R/o Salihapara, Bhanupratappur, P.S. & Tah. Bhanupratappur, Distt. Uttar Bastar Kanker C.G.

---- Appellant

Versus

1. Gaukaran Tandiya S/o Shyam Lal Tandiya Aged About 20 Years R/o Salihapara, Bhanupratappur, P.S. & Tah. Bhanupratappur, Distt. Uttar Bastar, Kanker C.G.
2. Kamal Kishor Nag S/o Mukund Ram Nag Aged About 54 Years R/o Patelpara, Narayanpur, Tah. And Distt. Narayanpur C.G.
3. National Insurance Company Limited Upper Central Bank, Near R.M.S. Office, Jagdalpur, Distt. Bastar C.G.

---- Respondents

For Appellant`	:	Mr. Sanjay Dewangan Advocate
For Respondent No.3	:	Mr. Qumrul Aziz, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

18-07-2017

1. The instant appeal filed under Section 173 of the Motor Vehicles Act, 1988 is against the award dated 25-6-2014 passed in Claim Case No. 118 of 2012 by the Additional Motor Accident Claims Tribunal, Bhanupratappur, whereby the claim petition of the claimant/appellant was partly allowed by awarding a total compensation of Rs.87,500/- as against the total claim of Rs.4,30,000/-.
2. Briefly stated facts of the case are that the claim petition was filed by Subhashchandra Nayak, father of the deceased Sonu Nayak that on 29-6-2012 at 6.15 pm., while

deceased Sonu Nayak @ Balakram along with Tejram and Bambeshwar was coming back to his house from village Chichgaon on motor-cycle bearing registration No. C.G. 19-B-1793, at that time, another motor-cycle bearing registration No. CG-17 KD-3020 driven by non-applicant No.1 Gaukaran Tandiya coming from opposite direction in rash and negligent manner dashed the vehicle which was being driven by Sonu Nyak as a result of which they sustained injuries, thereafter when they were brought to the Primary Health Centre, Bhauprattapur where Sonu Nyak was declared dead. It was stated that at the time of accident, deceased was aged about 15 years, he was working as labour and used to earn Rs.3000/- per month. Claimant/appellant was dependent on the deceased. Therefore, on various heads the claimant/appellant claimed a total compensation of Rs.4,30,000/- for the death of deceased.

3. The Claims Tribunal has awarded an amount of Rs.87,500/- by taking the notional income of Rs.7500/- which was multiplied by 9 and thereby an amount of Rs.67,500/- was awarded towards compensation. The Tribunal also awarded Rs.10,000/- for love and affection, Rs.5,000/- for loss of estate and Rs.5000/- for funeral expenses. The Claims Tribunal; further held that the vehicle bearing registration No. No. CG-17 KD-3020 was not driven in contravention of the terms of the Insurance Policy. No appeal has been filed against such finding of negligence or fastening of the

liability on the Insurance Company, therefore, the appeal is only confined to quantum of the compensation.

4. Learned counsel for the claimant/appellant submits that the Tribunal has failed to award just compensation, therefore, the award passed by the Tribunal may suitably be enhanced.

5. *Per contra,* learned counsel appearing on behalf of respondent No.3/Insurance Company would submit that the award passed by the Claims Tribunal is well merited which does not call for any interference.

6. I have heard the learned counsel for the parties at length and have perused the documents and evidence on record.

7. Perusal of the record shows that the claimant/appellant Subhashchandra Nayak was examined in which he stated that deceased Sonu Nayak was his son and used to earn Rs.3000/- per month by doing labour work. One more person is Nikhil Singh Thakur, who has stated that Sonu Nayak was working as labour and used to earn Rs.3000/- per month under him.

8. Since the appeal is confined to quantum of compensation, as such in facts of the case, the law laid down in the case of **Kishan Gopal and another vs. Lala and others**[1] would be guiding factor. In such case of the like nature, where the deceased was aged about ten years, his notional income was taken to be Rs.30,000/- per annum and multiplier of 15 was taken considering the age of the parents of the deceased. In this case also, though it is stated that the deceased used to earn Rs.3,000/- per

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month, safely it can be arrived at taking into the drastic fall in the money value, the notional income can be arrived at Rs.30,000/- per annum following the principle laid down in this case. Further, considering the age of the parents, the multiplier of ten would be appropriate. Thus, the total compensation works out to Rs.3,00,000/- (Rs.30,000/- x 10). Under the other heads ie., loss of love and affection, loss of estate and funeral expenses Rs.1,00,000/- appear to be just and proper in the facts and circumstances of the case.

9. Consequently, the total award is enhanced to Rs.4,00,000/-. Respondent No.3/Insurance Company shall be obliged to deposit the enhanced amount within further period of 30 days, the said amount shall carry interest @ 6% per annum from the date of filing of the claim petition till its realization.

10. In the result, the appeal is partly allowed. The claimant will be entitled to receive Rs. 3,12,500/- besides interest in addition to what is already awarded by the Claims Tribunal.

11. The Registry is directed to communicate the claimant in writing the "amount of award enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language and preferably the same may be communicated through Gram Panchayat of the concerned village of the claimant/appellant.

Sd/-

(GOUTAM BHADURI)
Judge

Raju