

NAFR**HIGH COURT of CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 439 of 2017**

Tata A I G General Insurance Company Limited through- Branch Manager,
Raipur, Office Address- 3rd Floor, Lal Ganga Shopping Mall, G.E.Road, Raipur,
Chhattisgarh(Insurer of Vehicle Bus No. C.G.04-E-2485)

---- Appellant**Versus**

1. Surit Nirmalkar S/o late Johan Nirmalkar, aged about 33 years, R/o Daldalsivni,
near Jaithkham, P.S. Mowa, District Raipur, Chhattisgarh
2. Sunil Kumar Nirmalkar S/o late Johan Nirmalkar, aged about 18 years, R/o
Daldalsivni, near Jaithkham, P.S. Mowa, District Raipur, (CG)(Claimants)
3. Sanjay Singh Gond S/o Shri Inder Singh Gond, aged about 35 years, R/o
Shankar Travels, Bajrang Chowk, P.S. and District Balodabazar,
Chhattisgarh(Driver of Vehicle Bus No. C.G.04 E 2485)
4. Smt. Sakun Bai Verma W/o Goverdhan Prasad Verma, R/o Shankar Travels,
Bajrang Chowk, P.S. and District Balodabazar, Chhattisgarh(Owner of
Vehicle Bus No. C.G.04 E 2485)

---- Respondents

For Appellant	:	Shri Manish Upadhyay, Advocate
For Respondents 1 & 2	:	Shri A. L. Singroul, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/07/2017**

Challenge in the present appeal is the award dated 24.12.2016 passed by the 4th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No.815/2015. Vide the said impugned award, the Claims Tribunal has allowed the application under Section 166 of the Motor Vehicles Act and ordered for payment of Rs.10,02,000/- as compensation to the claimants with interest @ 9% from the date of application.

2. The facts of the case are that the deceased Khilesh Kumar Nirmalkar who was working with Zee TV met with an accidental death on 24.07.2015 while he was going on his motorcycle bearing registration No. CG 04KJ 4572, it was dashed by a bus coming from the opposite direction bearing registration No. CG 04E 2485 of which respondent no.3 was the driver and respondent no.4 was the owner.

3. The claimants who are the two brothers of the deceased filed a claim application seeking for compensation on the death of their unmarried brother. Contention of the claimants was that the deceased was working with Zee TV and earning an amount of Rs.20,000/- per month, therefore, they had claimed for compensation of more than rupees 35 lakhs with interest @ 15% per annum.

4. The Claims Tribunal taking into consideration all the facts and circumstances of the case reached to the conclusion that the accident did take place on 24.07.2015 when the motorcycle of the deceased was dashed by the bus belonging to respondent no.4 driven by respondent no.3. However, since there was no proof of the salary that the deceased was earning, the Tribunal has taken Rs.6,000/- to be the monthly income of the deceased which would be on an average of Rs.200/- per day. In addition, the Tribunal has also taken into account 50% rise in the future income under the head of future prospect. Therefore, taking into account the age of the deceased, the Tribunal vide its award dated 24.12.2016 granted the compensation of Rs.10,02,000/- to the claimants.

5. It is this award which is under challenge.

6. The solitary ground of challenge to the impugned award is the quantum. According to the counsel for the appellant, the calculation has not been properly done by the Tribunal in as much as there was no proof of employment or salary which the deceased was drawing. Therefore, the

salary of Rs.6,000/- per month which has been taken for the purpose of calculation by the Tribunal is not proper, legal and justified and the same deserves to be interfered with.

7. Contention of the counsel for the appellant does not have any substantial force for the reason that it cannot be said that the calculation which the Tribunal has taken of Rs.200/- per day to be on the higher side or exorbitant. Even a labour today earns more than Rs.200/- per day, therefore, if the Tribunal has taken Rs.6,000/- as an average monthly income, the same cannot be said to be unreasonable or unjustified. Likewise, taking into consideration the age of the deceased i.e. 22 years at the time of accident, it cannot be said that the finding of the Tribunal of calculating compensation under future prospect granting 50% rise in income to be unjustified and unreasonable. So far as the contention of the appellant that the claimants before the Tribunal were not the direct dependants and therefore the impugned award is bad in law is concerned, the same is also not acceptable for the reason that undisputedly, the two claimants are the real brothers of the deceased. Respondent no.1 is the elder brother and respondent no.2 is the younger brother. In view of the same, it cannot be said that only on account of the fact that the deceased was unmarried, his two real brothers would not have entitled for any compensation. Thus, the ground raised by the counsel for the appellant in this regard also being not sustainable the same stands rejected.

8. Thus, the present appeal being devoid of merits, the same deserves to be and is accordingly dismissed.

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