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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 473 of 2017**

Chola Mandlam M. S. General Insurance Company Limited Through Branch Manager, Jeevan Beema Marg, Raipur Police Station Pandri Raipur, Chhattisgarh ..............(Insurer Of Vehicle Truck No. C.G.17 H 1003).

**---- Appellant**

**Versus**

1. Manjappa Maleyappa Nawar S/o Late H.Duggappa, Aged About 53 Years R/o At Present- Quarter Number 86, Type 4, 3rd Floor/125, Kirandul Complex, Kirandul, Dantewada, South Bastar, Chhattisgarh
2. H.Shovgan Devi W/o Manjappa Maleyappa Nawar, Aged About 48 Years R/o At Present- Quarter Number 86, Type 4, 3rd Floor/125, Kirandul Complex, Kirandul, Dantewada, South Bastar, Chhattisgarh ............... (Claimants)
3. M.Venkat Rao S/o Late M.Venugopal Rao, R/o Behind F.C.I. Godown, Jagdalpur, Distt. Bastar, Chhattisgarh ................(Driver Of Vehicle Truck No. C.G.17 H 1003)
4. Shankar Tiwari S/o Ganesh Tiwari, R/o Nyapara, Near Krishna Petrol Pump, Jagdalpur, Distt. Bastar, Chhattisgarh ...............(Owner Of Vehicle Truck No. C.G.17 H 1003).

**---- Respondents**

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| For Appellant | : | Shri Shokie Yadav, Advocate. |
| For respondents/Claimants | : | Shri PK Tulsyan, Advocate. |

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**SB: Hon'ble Shri Justice P. Sam Koshy**

**Order On Board**

**19/07/2017**

1. Present is an appeal filed by the insurance company under Section 173 of the Motor Vehicles Act assailing the award dated 16.11.2016 passed by the Additional Motor Accident Claims Tribunal, Dantewada (for short, the Tribunal), in Claim Case No.60/2014.
2. The respondents/claimants have also filed cross objection/appeal seeking for enhancement of compensation.
3. The facts in brief is that HM Arun Kumar, Junior Officer working at

NMDC, Kirandul while travelling in his Car bearing registration No. AP-23-H-4539 met with an accident when his Car was dashed by the Truck bearing registration No.CG-17-H-1003 owned by the respondent No.4, driven by the respondent NO.3 and insured by the present appellant. As a result of the said accident HM Arunkumar died during the course of treatment. The deceased was an unmarried boy aged about 27 years. The parents of the deceased filed claim application under Section 166 of the Motor Vehicles Act.

4. The Tribunal relying upon the evidence which have come on record allowed the claim application and have ordered for payment of compensation of Rs.38,73,808/- of which the loss of income and dependency amount itself was at Rs.37,43,808/-. It is this amount which has been assailed by the claimant in their cross objection.

5. So far as appeal of the Insurance Company is concerned, the appellant have challenged the award on three grounds. Firstly in fastening the of liability upon the Insurance Company in the present case was erroneous for the reason that FIR which was lodged immediately after the incident was against unknown person and since FIR itself was against the unknown person, the identification of the offending vehicle is doubtful. Therefore the liability could not have been fastened upon the Insurance Company.

6. The other ground raised by the Appellant is the fact that since the deceased was unmarried young boy aged about 27 years, the calculation of compensation of adding 50% of income towards future prospects was again erroneous by the Tribunal. Likewise, according

to counsel for the Appellant, the multiplier of 17 which has been applied also is bad in law and therefore the impugned award deserves to be either set aside or modified suitably.

7. So far as the issue of lodging FIR against the unknown person is concerned, the fact still remains that criminal case has been lodged against the Respondent No.3, the driver of the offending vehicle owned by the Respondent No.4. There has been no evidence what so ever led by the Insurance Company to substantiate the fact that accident did not occur from the vehicle belonging to the Respondent No.4 which was duly insured by the present Appellant. It is all the more worthy to take note that the Respondent No.3, the driver of the offending vehicle has infact entered appearance before the Tribunal and had filed his written statement wherein he had while denying the rash and negligence on his part has said that the accident arose because of the rash and negligent driving of the deceased himself. This averment of the Respondent No.3 before the Tribunal proves that the accident did take place arising out of the use of offending vehicle i.e.Truck bearing registration No. CG-17-H-1003. There is no reply by the owner to dispute or rebut the said contention put forth by their driver i.e. Respondent No.3. In addition, none of the Respondents before the Tribunal have led any evidence to controvert the submission made by the claimants before the Tribunal. Another aspect which cannot be lost sight is the fact that the claimant No.2 i.e. mother of the deceased was herself an eye witness to the accident as she was also travelling along with the deceased when the

accident arose and whose evidence has not been rebutted or controverted in any manner and therefore, there is no reason to disbelief the version of claimant No.2, mother and therefore the said contention of the Insurance Company stands negated.

8. So far as quantum part is concerned, both the issues i.e. adding of 50 percent of income towards future prospect and applying multiplier of 17 are no longer res-integra in view of Judgments of Supreme Court right from Sarla Verma and Others Vs. Delhi Transport Corporation and Another, 2009(6) SCC 121 till Amrit Bhanu Shali and Others Vs. National Insurance Company Limited and Others, 2011 (12) SCC 748 as also the judgment in Rajesh and Others Vs. Rajbir Singh and Others, 2013(9) SCC 54, wherein both these issues so far as adding of income towards future prospects and also the multiplier have been settled. Thus, both the grounds raised by the Insurance Company stands negated.

9. Now coming to the cross objection/appeal filed by the claimants are concerned, the claimants are seeking for enhancement of compensation on the ground that Tribunal has not properly taken into consideration the wages which the deceased at the time of accident was drawing for the purpose of quantifying the compensation. Counsel for the claimants drew the attention of the Court to the pay slip of the deceased of the month of August-2011. In the said pay slip the gross salary of the deceased was shown to be Rs.33,595.64/- and after deduction net salary was shown to be Rs.24,469/-. Counsel for the claimant submits that among deductions which have been

made, certain deductions made like the deduction towards the compulsory provident fund as well as for the corporate provident fund are two deductions which are otherwise income of the deceased. If these two deductions alone are taken into account, the net monthly income of the deceased would be Rs. 29,221/-. Thus, the Tribunal ought to have quantified the compensation taking this figure as monthly wages of the deceased and prayed for compensation part to be enhanced suitably.

10. Having considered the rival contentions put forth on either side and on perusal of records, this court is in full agreement with the contention of the claimants wherein from Ex. P/16, pay slip of the deceased for the month of August, 2011 clearly reflect that out of the deductions made from the gross salary, the amount of deduction made under the head compulsory provident fund as well as corporate provident fund is concerned, the same definitely would be the income of the deceased employee and the same ought to have been added for the purpose of determining the wages of the deceased.

11. If both these deductions are added with the net salary of Rs.24,465/- it comes to Rs.29,221/-. For calculation purpose, this court feels it proper to quantify the monthly income of the deceased to be at Rs.29,000/-. Thus, the compensation payable to the claimants should have been calculated accepting the wages of the deceased to be Rs.29000/- instead of Rs.24,469/- as quantified by the Tribunal. It is ordered accordingly.

12. If we calculate the compensation for loss of income accepting the

wages of the deceased to be Rs.29000/- and if we add 50 percent of it towards future prospects, the monthly income would be Rs.43,500/- i.e. Rs.5,22,000/-annual. If this amount is multiplied with 17, the amount would be Rs.88,74,000/-, and considering the fact that the deceased was a young unmarried boy if we deduct 50 of it towards his personal expenses, the remaining amount would be Rs.44,37,000/-. It is this amount i.e. Rs.44,37,000/- which would be payable to the claimants under the head of income of and dependency instead of Rs.37,43,808/-.

13. Thus, the claimants would be entitled for an additional enhanced amount of compensation of Rs.6,93,192/-. The remaining part of the award shall remain intact. The said enhanced amount shall carry interest as fixed by the Tribunal.

14. The appellant-insurance company is granted two months time to deposit the above enhanced amount before the concerned claims Tribunal.

15. The appeal of the appellant-insurance company stands rejected and the cross objection/appeal filed by the claimants stands allowed.

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

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