

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 510 of 2017**

- Smt. Reva Chakraborty Wd/o Sunil Chakraborty, Aged About 46 Years R/o Village P.V.13 Shyamnagar P.S. And Tahsil Pakhanjur District North Bastar Kanker, Chhattisgarh(Claimant)

---- Appellant**Versus**

1. Dushyant Kumar Dhankar S/o Mangala Ram, Aged About 24 Years R/o Bhatapara Nahda P.S. And Tahsil Gundardehi District Balod, Chhattisgarh(Driver Cum Owner)
2. Tata A.I.G. Insurance Company Limited, Agent/ Brokar/ Producer Jayka Insurance Broker And Pvt. Ltd. Raipur, Chhattisgarh(Insurer Of The Vehicle)
3. Purshottam Sikdar S/o N.K.Sikdar, Aged About 30 Years R/o Village Awaspara Pakhanjur P.S. And Tahsil Pakhanjur District North Bastar Kanker, Chhattisgarh(Driver Of The Vehicle)
4. Sapan Adhikari S/o Shanti Adhikari, Aged About 38 Years R/o P.V.13 Shayma Nagar P.S. And Tahsil Pakhanjur District North Bastar Kanker, Chhattisgarh(Owner Of The Vehicle)
5. The Oriental Insurance Co. Ltd., Through Branch Manager Adarsh Bal Mandir Road Dhamtari District Dhamtari, Chhattisgarh(Insurer)

---- Respondents

For Appellant	:	Shri PK Tulsyan, Advocate
For Respondent No.1 &2	:	Shri DL Dewangan, Advocate
For Respondent No.3& 4	:	Shri AL Singroul, Advocate
For Respondent No.5	:	Ms. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****14/07/2017**

1. The present is an appeal under Section 173 of the Motor Vehicle Act, 1988 (for short 'the Act, 1988') seeking for enhancement of compensation. Challenge in this appeal is to the award dated 30.01.2017 passed by the

Additional Motor Accident Claims Tribunal in Claim Case No.21/2016.

2. Brief Facts of the case are that deceased Late Shankar Chakravarti, the unmarried son of the claimant was working as a conductor on the commercial jeep owned by respondent No.4 and driven by respondent No.3 bearing Registration No.CG19 T 0541. It is said that on 18.02.2016 while he was traveling in the said jeep as a conductor, he was dashed by a Tata S. (Chhota Hathi) owned and driven by respondent No.1 bearing Registration No.CG04HS5791. As a result of the said accident, the deceased received several grievous injuries to which he later succumbed. The mother of the deceased filed the claim petition under Section 166 of the Motor Vehicle Act. The learned Tribunal taking into consideration all the facts and evidence, which have come on record, found that the accident arose because of the rash and negligent driving on the part of the driver of Tata S. (Chhota Hathi) bearing Registration No.CG04/HS5791 and that further held that the claimant is entitled for compensation of Rs.3,21,000/- with interest @ 9% per annum from the date of application.
3. Thus this award which is under challenge by the appellant seeking for enhancement.
4. Counsel for the appellant submits that the amount of compensation awarded by the Tribunal is on the lower side, inasmuch as the wages which have been taken into consideration by the Tribunal are not proper as the date of death was 18.02.2016 when the minimum wages were from Rs.150/- to Rs.200/- per day and as such the monthly income was between Rs.4500/- to Rs.6000/- whereas the Tribunal has taken the monthly wages as Rs. 3000/- per month. He would also submit that the learned Tribunal ought to have granted compensation also under the head of future prospects,

whereas in view of the judgment of the Supreme Court in the matter of **Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and another**¹ 50 % should have been granted. It was lastly contended that the compensation paid under the other heads of Rs.5000/- is also on the lower side and the same too deserve enhancement.

5. At this juncture, counsel for the appellant submits that in the operative part of the award the Tribunal has awarded interest from the date of application i.e. 30.1.2017 and not from 24.6.2016 which itself seems to be erroneous as 24.06.2016 is the actual date of moving the application under Section 166 of the Act, 1988.
6. Counsel for the respondents submitted that the award seems to be fair and reasonable. The Tribunal has taken into consideration all the facts and circumstances of the case and had also taken note of age of the deceased and that he was an unmarried young man, compensation awarded was justified and prays for rejection of the appeal.
7. Having heard counsel for the rival parties and on perusal of the records, the admitted facts which flow from the records are; the accident did take place on 18.02.2016; the deceased was traveling in the vehicle owned by respondent No.4 where he was discharging duties of conductor; the accident arose because of the dash given by the vehicle which was owned and driven by respondent No.1 bearing registration No.CG04/HS5791. The said offending vehicle was insured with respondent No.2. As a result of the accident the deceased received grievous injuries, to which he later succumbed. Now the only issue which is to be considered is whether the amount of compensation given by the Tribunal is justified or not whether it requires interference in the factual matrix of the case.

¹ (2009) 6 SCC 121

8. The deceased being the conductor of the jeep is not rebutted by any of the respondent and as such the said finding stands affirmed. Indisputably in the year 2016, had the deceased while working, would have got at least the minimum wages of Rs.150-Rs.200/- a day, which comes around Rs.4500/- to Rs.6000/- per month. In the said factual scenario, this Court has no hesitation in holding the notional income as taken by the Tribunal of Rs.3000/- to be on lower side.
9. In the opinion of this Court, ends of justice would be served if the monthly income of the deceased would have been taken at least as Rs.4500/- and it is ordered accordingly. Likewise if this Court is also of the opinion that non-payment of compensation under the head of future prospects is not proper, legal and justified, the Tribunal ought to have borne in mind the judgments of the Supreme Court right from **Sarla Verma (supra)** till **Rajesh and others Vs. Rajbir Singh & Others**² wherein in calculating the compensation, the future prospects was also considered as a necessary component.
10. In view of the law laid down by the Supreme Court in the afore-referred judgments, this Court is of the opinion that the Tribunal ought to have considered 50% of the income of the deceased under the head of future prospects for the purposes of calculating the compensation. Similarly, the amount of compensation awarded towards loss of love and affection and the loss of estate, which is Rs.10,000/-, being considerably on the lower side deserves to be enhanced and the same is ordered to be enhanced to Rs.1 Lakh. Likewise the funeral expenses of Rs.5000/- is also on the lower side.
11. Considering the fact that the death took place in the year 2016, the same also deserves to be and is enhanced to Rs.25,000/-.

² (2013) 9 SCC 54

12.As a consequence, the present appeal is allowed and the amount of compensation awarded to the appellant is enhanced and the loss of dependency and income stands enhanced to Rs.6,88,500/- instead of Rs.306000/-. Likewise compensation for loss of love and affection and loss of estate enhanced to Rs.1 Lakh from Rs.10000/- and the funeral expenses are enhanced to Rs.25000/- instead of Rs.5000/-. Thus the total compensation to the appellant becomes Rs.8,13,500/- minus the amount awarded the balance amount payable by the respondents would be Rs.4,92,500/-. It is ordered that the insurer of the offending vehicle i.e. respondent No.2 shall pay balance amount of enhanced compensation of Rs.4,92,500/-, in addition to the amount already awarded by the Tribunal within a period of sixty days.

13.It is clarified that the interest on the amount enhanced shall be @ 9% per annum as awarded by the Tribunal and it shall be effective from the date of application i.e. 24.06.2016 and not from 30.01.2017 as reflected in the impugned award in para 24 (2).

14. The appeal is accordingly allowed and the impugned award is modified to the above extent.

Sd/-

(P.Sam Koshy)
Judge

Ashu