

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 706 of 2017**

National Insurance Company Ltd. through Branch Manager, Branch Office,
Station Road, Gill Complex, Near Gurudwara, Durg, Tah. & Distt. Durg,
Chhattisgarh(Non-Applicant No.3)

---- Appellant**Versus**

1. Smt. Basanti Bai W/o Kailash Kumar Yadav, aged about 49 years, R/o Vill. Nagpura, P.S. Pulgaon, Tah. & Distt. Durg, Chhattisgarh
(Applicant No.1)
2. Kailash Kumar Yadav S/o late Punna Ram Yadav, aged about 52 years, R/o Vill. Nagpura, P.S. Pulgaon, Tah. & Distt. Durg, Chhattisgarh
(Applicant No.2)
3. Kuleshwar Yadav S/o Kailash Kumar Yadav, aged about 18 years, R/o Vill. Nagpura, P.S. Pulgaon, Tah. & Distt. Durg, Chhattisgarh
(Applicant No.3)
4. Kamalkant Sahu S/o Bhagatram, aged about 35 years, Permanent R/o Vill. Nagpura, P.S. Pulgaon, Tah. & Distt. Durg, Chhattisgarh(Non-Applicant No.1/ Driver of Tractor No. C.G.07 N A 1907)
5. Bhagatram Sahu S/o Ankalha Ram Sahu, aged about 56 years, Permanent R/o 117 Vill. Nagpura, P.S. Pulgaon, Tah. & Distt. Durg, Chhattisgarh(Non-Applicant No.2/ Registered Owner of Tractor No. C.G.07 N A 1907)

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For the Respondents 1 to 3	:	Shri Purnendra Khichariya, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****13/07/2017**

The present is an appeal by the Insurance Company under Section 173
of the Motor Vehicles Act assailing the award dated 10.02.2017 passed by the

1st Additional Motor Accident Claims Tribunal, Durg (CG) in Claim Case No. 74 of 2014. Vide the impugned award the Tribunal in a proceedings under Section 166 of the Motor Vehicles Act has granted compensation to the claimants i.e. respondents 1 to 3 to the tune of Rs.9,79,000/- with interest @ 6% per annum from the date of application.

2. There are two fold arguments on behalf of the Insurance Company assailing the impugned award. According to the counsel for the appellant, there was a breach of policy condition as the accident arose because of the deceased namely Goverdhan Yadav getting crushed under the thresher machine which was attached to the tractor bearing registration No. CG 07 NA 1907. According to the counsel for the appellant, the thresher machine was not insured and it was only the tractor which was insured and therefore, when the deceased got crushed under the thresher machine, it cannot be presumed that the liability would fall upon the Insurance Company which had insured only the tractor. Hence, counsel for the appellant prayed that the liability of payment of compensation may be shifted from the Insurance Company to that of the owner and the driver of the tractor. Likewise, the quantum of the award granting Rs.50,000/- compensation to the respondents 2 & 3 who are father and brother of the deceased being the legal representatives is also bad in law. According to the counsel for the appellant, the Tribunal has at the first instance already granted Rs.50,000/- towards loss of love and affection to the father of the deceased and thereafter, the same cannot be again given under the head of being legal representative of the deceased. Therefore, the amount of Rs.50,000/- granted to the father of the deceased is bad in law. Similarly, counsel for the appellant has alleged that since respondent no.3 i.e. the brother of the deceased was a major and was not dependant upon the deceased, he would not fall within the category of being a legal representative

of the deceased particularly when the parents were alive. Thus, granting of Rs.50,000/- to the brother of the deceased being a legal representative of the deceased is also bad in law. Counsel for the appellant also assails the granting of 50% compensation under the head of future prospects on the ground that the claimants have not established the employment part effectively and therefore the granting of compensation under the head of future prospects is bad in law.

3. So far as the first contention regarding the breach of policy condition is concerned, this Court is not inclined to accept the said contention on the ground that admittedly the accident arose while the tractor was carrying the thresher machine from one field to another field. It was the rash and negligent driving of the driver of the tractor on account of which the accident took place. The Thresher machine was attached to the tractor when the accident arose and therefore it has to be presumed that the accident arose because of the rash and negligent use of the tractor which was insured by the appellant. Moreover, the accident did not occur because of the use of the thresher machine but the accident arose in the course of the use of the motor vehicle i.e. tractor.

4. So far as the grant of compensation under the future prospects is concerned, taking into consideration the judicial pronouncements right from the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** till the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54** and also the subsequent decisions, it is settled law that when there is a loss of income, particularly when the deceased is a young person there would always be future prospects also to be considered for compensation. Admittedly, the deceased in the instant case at the time of accident was aged around 21

years and there would definitely have been a rise in his source of income and wages and therefore granting of 50% future prospects cannot be said to be arbitrary or contrary to the evidences.

5. So far as the grant of compensation to the father under the head of being the legal representative is concerned, this Court is of the opinion that true it is when the father has already been given compensation of Rs.50,000/- for the loss of love and affection at the first instance, the subsequent granting of Rs.50,000/- only on the ground of his being the legal representative was uncalled for and the impugned award deserves to be modified to that extent.

6. So far as the granting of Rs.50,000/- to the brother of the deceased i.e. respondent no.3 is concerned, the same does not warrant any interference as undisputedly respondent no.3 being the brother of the deceased has lost the companionship of his brother that too at a very young age. Thus, the same does not warrant any interference.

7. For the aforesaid reasons, this Court is of the opinion that the compensation of Rs.50,000/- to respondent no.2 i.e. father of the deceased under the head of being the legal representative is liable to be and is accordingly reduced from the total amount of compensation granted by the Tribunal. Thus, the claimants shall be entitled for compensation of Rs.9,29,000/- in stead of Rs. 9,79,000/-. The remaining part of the impugned award including the interest granted shall remain intact.

8. The appeal stands partly allowed.

Sd/-
(P. Sam Koshy)
JUDGE