

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1360 of 2015**

1. Mahadev Bareth S/o Buddhsay Bareth, aged about 38 Years R/o Near Shiv Mandir, Mopka, Police Station Sarkanda, District Bilaspur (Chhattisgarh)
2. Kusum Bareth W/o Mahadev Bareth, aged about 33 Years R/o Near Shiv Mandir, Mopka, Police Station Sarkanda, District Bilaspur (Chhattisgarh).....(Claimants)

---- Appellants**Versus**

1. Ravi Kumar Gabel S/o Hariram Gabel, aged about 27 Years R/o Bhurkadih, Post Jharna, Police Station and Tahsil Sakti, District Janjgir Champa (Chhattisgarh).....(Driver of Alleged Vehicle Bearing Registration No. C G 04 J 7625)
2. M/s Prakash Industries Limited through Owner / Director, Ring Road No. 2, Raipur, Tahsil & District Raipur (Chhattisgarh).....Another address - Prakash Industries Limited Champa, District Janjgir Champa (Chhattisgarh).....(Owner of alleged vehicle bearing Registration No. C G 04 J 7625)
3. The Oriental Insurance Company Limited, through Branch Manager, Branch office, Infront of Rajeev Plaza, Bus Stand Bilaspur, District Bilaspur (Chhattisgarh) (Wrongly Mentioned As District Durg).....(Insurer of alleged bus bearing Registration No. C. G. 04 J 7625).....(Non-Applicants)

---- Respondents

For Appellants	:	Shri Anil Gulati, Advocate
For Respondent no.2	:	Shri Viprasen Agrawal, Advocate
For Respondent no.3	:	Shri Deepak Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****17/07/2017**

The present is an appeal under Section 173 of the Motor Vehicles Act filed by the claimant for enhancement. The challenge in the present appeal is the order dated 17.08.2015 passed by the 4th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No. 785/14.

2. It is a case where deceased Ku. Soniya Bareth, a 15 years' student of Class 9th while going to the school was hit by the trailer bearing registration No. CG04J 7625 belonging to respondent no.2 which was being driven by respondent no.1 and was insured with respondent no.3. On account of the accident, Ku.

Soniya died on the spot as she came underneath the trailer. The driver of the offending vehicle was also prosecuted in Crime No.256/14 registered at Police Station, Champa. The parents of the deceased preferred an application under Section 166 of Motor Vehicles Act seeking compensation.

3. The Tribunal taking into consideration the pleadings and the evidences which have come on record and also relying upon the judgment of the Supreme Court in the Case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** awarded an amount of Rs.2,25,000/- as compensation and Rs.15,000/- under other heads totaling Rs.2,40,000/-.

4. It is this award which has been assailed by the appellant.

5. Counsel for the appellant relies upon the recent decision of the Supreme Court in the case of **Kisan Gopal and another Vs. Lala and others** reported in **(2014) 1 SCC 244** wherein also the claim was in respect of death of a 15 years old minor girl student of Class IX. Considering the judicial pronouncement of the past, the Supreme Court in the said judgment reached to the conclusion that in a case of death of a child aged between 10-15 years, the notional income for the purpose of calculating compensation should be accepted as Rs.30,000/- a year and on the basis of which, the compensation payable would be Rs.4,50,000/-. A lumpsum compensation of Rs.50,000/- under the other heads was also ordered to be calculated making the compensation payable in case of death of a child between 10-15 years at Rs.5,00,000/-. The Appellant prayed that the impugned award may be modified accordingly.

6. Counsel appearing for the respondents however oppose the petition and submit that the impugned award passed by the Tribunal is fair and reasonable and does not warrant interference for the simple reason that the Tribunal has taken into consideration the amount of compensation as per the calculation envisaged in the judgment of the Supreme Court in the case of Sarla Verma (supra). Thus, prayed for dismissal of the appeal.

7. Considering the rival contentions put forth on either side and on perusal of record when we compare the admitted facts of the present case where the date of accident is 13.08.2014, the offending vehicle being owned by respondent no.2 and which was being driven by respondent no.1 and insured by respondent no.3, we only have to see whether the factual matrix of the present case fits in the proposition of law as envisaged in the judgment of the Hon'ble Supreme Court in the case of Kisan Gopal (supra) or not. What is striking to the conscience of this Court is that in the case of Kisan Gopal the accident was of July 1992 whereas in the instant case the incident is of August 2014. When in respect of an accident that took place in 1992 the assessment of compensation has been made at Rs.5,00,000/-, this Court has no hesitation in applying the same analogy for a death that took place in the year 2014. In the said circumstances, applying the same analogy this Court is of the opinion that the amount awarded needs to be interfered/altered to the extent that the claimants shall be entitled for compensation taking the notional income of the deceased to be Rs.30,000/- in stead of Rs.15,000/- what has been assessed by the Tribunal. Accordingly, the compensation payable to the petitioner shall be Rs.4,50,000/-. Likewise, as per the proposition of law envisaged in the case of Kisan Gopal, (Supra) the claimants shall also be entitled for a lump sum compensation of Rs.50,000/- under the other heads. Thus, the total compensation payable would become Rs.5,00,000/- in stead of Rs.2,40,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the rate as has been fixed by the Tribunal

8. With the aforesaid modification to the impugned award, the present appeal stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE