

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 647 of 2015

- The Oriental Insurance Co. Ltd., Through its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Civil & Revenue District- Bilaspur (C.G.) PIN - 495001

---- Appellant

Versus

1. Shildhar Sai Paikra, S/o Shri Kalpnath Sai, aged about 37 years, Occupation - Service
2. Smt. Chandrakiran Paikra, W/o Shri Shildhar Sai Paikra, aged about 31 years

Note:- Both the Respondents 1 and 2 are r/o Village Kurdeg, Tahsil Bagicha, District- Jashpur (C.G.)

(Claimants)

3. Bindra Prasad Gupta, S/o late Shivilal Sao, Gandhi Nagar, Ambikapur, District Sarguja (C.G.)

(Owner)

4. Anil Kumar Nagesiya, S/o Bhoolan Ram Nagesiya, aged about 30 years, Occupation Driver, r/o Village Kot, Tahsil Lundra, District Sarguja (C.G.) Presently r/o Gandhi Nagar, Ambikapur, District Sarguja (C.G.)

(Driver)

---- Respondents

For Appellant	: Shri Pallav Mishra, Advocate appears on behalf of Shri Ratan Pusty, Advocate
For Respondent No.1	: Shri Rishikant Mahobia, Advocate appears on behalf of Shri A.K. Prasad, Advocate
For Respondents 2, 3 & 4:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

12.11.2018

1. Heard on admission.
2. Admit.
3. Being aggrieved with the order dated 19.03.2015 passed in Claim Case No.

19 of 2013 by the Additional Motor Accident Claims Tribunal, (FTC) Jashpur, District Jashpur (C.G.), the Appellant/Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The case in brief is that on the fateful day i.e. on 07.05.2012, Respondent No.1 had gone to attend the funeral at the house of Sarpanch of Jujgoo. The father of Respondent No.1 was also following him to attend the said funeral on foot accompanied by deceased Ku. Preetvi, 5 years of age, and he was going slowly alongside the road from Kurdeg to Jujgoo and from Bimra to Bamba. It was further alleged that when they reached in front of the house of Harinath Sai, at that time a white coloured Mahindra Maxx Pick-up vehicle bearing registration No. CG – 15-A/3760 which was coming from the side of Bamba and which was being driven by Respondent No.3 – Anil Kumar Nagesiya rashly and negligently, dashed the deceased as a result of which she received multiple injuries over her head, right temple and in both the thighs. The deceased was taken to Bagicha Hospital, where she died.

5. Learned counsel for the Appellant/Insurance Company submits that the Tribunal has awarded Rs.2,98,000/- along with 9% interest per annum from the date of claim petition which is on higher side and the multiplier cannot be used in the age group of 5 years. He also submits that the fitness and permit were not filed by the owner of the offending vehicle, therefore, the Tribunal has fallen in error in fastening the liability to pay compensation upon the Appellant/Insurance Company.

6. On the other hand, learned counsel for Respondent No. 1 supported the award impugned and submits that there is no illegality, therefore, there is no need to interfere with the award impugned.

7. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of the Claims Tribunal.

8. Considering the age of the deceased i.e. 5 years in view of the decision of the Supreme Court in the matter of **Kishan Gopal and Another Vs. Lala and Others, (2014) SCC 244**, the learned Tribunal awarded compensation to the tune

of Rs.2,98,000/- which cannot be said to be on higher side and there is no evidence adduced by the Appellant/Insurance Company regarding permit and there is no counter appeal filed by the Respondents. Thus, considering the overall evidence available on record, I am of the view that the Tribunal has not committed any error in fastening the liability to pay compensation upon the Appellant/Insurance Company.

9. In the result, the appeal being without any substance is liable to be dismissed and is accordingly dismissed.

10. Consequently, the stay order granted on 23.09.2015 stands vacated.

11. Copy of this judgment be sent to the concerned Tribunal.

12. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge