

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 66 of 2014

1. Santosh Sahu S/o Late Lekh Ram Sahu Aged About 37 Years
2. Smt. Sonkunwar Sahu W/o Santosh Sahu Aged About 32 Years

Both R/o Bachhera Para, Tifra, P.O. Tifra, P.S. Sirgitti, Tah. Bilaspur, Civil and Revenue Distt. Bilaspur C.G.

---- Appellants

Versus

1. Ramakant Prajapati S/o Sudarshan Ram R/o Urga Nagar, Deepika, Thana- Deepika, Distt. Korba C.G., At Present R/o Jyoti Nagar, Palika Gate, Pali Road, Deepika, Distt. Korba C.G.
2. Jay Prakash Rajwade S/o Tikhait Ram Rajwade R/o Ward No. 10, Vishram Nagar, Jhabar, P.O. Deepika, Distt. Korba C.G.
3. Royal Sundaram Allianz Insurance Co.Ltd. Thru- Branch Manager, Chawla Complex, Sai Nagar, Devendra Nagar Road, Raipur, Distt. Raipur C.G.

---- Respondents

For Appellants	:	Shri V.K. Deshmukh, Advocate.
For Respondent No.3	:	Shri Rohitasva Singh, Advocate on behalf of Shri N.K. Thakur, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

16/11/2018

The appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (in short "the Act") seeking enhancement of compensation awarded by the 6th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.135/2013 vide award dated 16.8.2013, thereby granting compensation of Rs.1,54,500/- with interest @ 7.5% per annum from the date of application till realization in favour of the claimants, fastening liability upon respondent No.3/insurance company.

02. As per averments made in the application filed under Section 163A of the Act by the claimants, mother and father of deceased Kishan Sahu, aged 12 years, studying in Class-IV, on 13.10.2011 respondent No.1 Ramakant Prajapati driving the vehicle Truck bearing No. CG 12S/1687 in a rash and negligent manner, dashed the deceased as a result of which deceased suffered grievous injuries and died in the hospital on the same day while undergoing treatment. At the time of accident, the offending vehicle was owned by respondent No.2 and insured with respondent No.3. Hence, the claimants by filing claim application sought compensation of Rs.10.60 lacs with interest from the respondents under various heads.

03. The Tribunal considering the evidence of both the parties, by the impugned award granted compensation in favour of the claimants as mentioned above. Hence this appeal by the claimants for enhancement of compensation. However, no counter appeal has been filed by the respondents in this case.

04. Counsel for the appellants submits that the deceased was 12 years of age, studying in Class-IV; there was no amendment in the Act since 1994 by the Government when the award was passed and as such, the Tribunal awarded compensation as per the then Second Schedule of Section 163A of the Act. He submits that now amendment has been made in the Act in relation to Second Schedule of Section 163A of the Act to this effect. He further submits that the Hon'ble Supreme Court in the matter of ***Kishan Gopal and another Vs. Lala and others, (2014) 1 SCC 244***, where a child aged 10 years died in a motor vehicle accident on 19th July, 1992, awarded a lumpsum amount of Rs.5 lacs as compensation and therefore, the claimants are entitled for compensation to the tune of Rs.5 lacs.

05. On the other hand, learned counsel for the respondent No.3/insurance company vehemently opposed the submission of the appellants and argued that the case of *Kishan Gopal* (supra) is distinguishable from the present case as in the cited case the claim application was u/s 166 of the Act whereas in the present case, the claim petition was filed u/s 163A of the Act. However, he does not

dispute that aforesaid amendment has been made in the Act but he submits that the same is applicable from the date of publication of the amendment in the Official Gazette. In view of above, he submits that the compensation granted by the Tribunal is not liable to be enhanced as claimed by the appellants/claimants.

06. Heard learned counsel for the parties and perused the material available on record.

07. Considering the facts and circumstances of the case, that the claimants herein are the young mother and father of the deceased child aged 12 years studying in Class-IV; that after a long period since 1994 amendment has been made in the Act in respect of Second Schedule of Section 163A of the Act; the law laid down in *Kishan Gopal* case (supra) and that appeal is the continuation of the suit, and further keeping in view the fact that the Act is benevolent in nature, this Court is of the opinion that there is no legal impediment in enhancing the amount of compensation to the tune of Rs.5 lacs in terms of decision of the Hon'ble Supreme Court in *Kishan Gopal* (supra) and the recent amendment in the Act.

08. In the result, the appeal is allowed and the impugned award is hereby modified to the extent that the appellant/claimants are held entitled for a lumpsum compensation of Rs.5 lacs with interest @ 7.5% p.a. from the date of application till realization. In other words, the compensation awarded by the Tribunal is enhanced to Rs.5 lacs. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge