

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 878 of 2012**

1. Smt Kamlesh Dhruv Wd/o Late Devendra Kumar Dhruv Aged About 38 Years
2. Ku. Tuneda Dhruv D/o Late Devendra Kumar Dhruv Aged About 16 Years
3. Chitesh Kumar Dhruv S/o Late Devendra Kumar Dhruv Aged About 15 Years
4. Ku. Yamini D/o Late Devendra Kumar Dhruv Aged About 9 Years Minor,
Appellant No.2 to 4 are Minor, Through: their mother Smt. Kamlesh Dhruv (Appellant No.1)
5. Tomar Singh Dhruv S/o Late Dular Singh Dhruv Aged About 69 Years
6. Smt. Basanti Bai W/o Tomar Singh Dhruv Aged About 65 Years
All are R/o. Village Amdi, P.O. And P.S. Gariyabandh, District Raipur
Now Gariyabandh, Chhattisgarh

---- Appellants**Versus**

1. Omprakash Sahu S/o Ram Khilawan Sahu, R/o. Bhatapara Chowk, Hirni, P.S. Sohela, District Raipur, Chhattisgarh
2. Smt. Dhan Bai W/o. Ram Khilawan Sahu R/o. Bhatapara Chowk, Hirni, P.S. Sohela, District Raipur, Chhattisgarh
3. I.C.I.C.I. Lombard Insurance Com. Ltd. Through Officer In Charge, Office At- Lal Ganga Shopping Complex, G.E. Road, Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Mr. Amiyakant Tiwari, Advocate
For Respondent No.3	:	Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****12/02/2018**

1. The present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act seeking for enhancement. Challenge is to the award dated 15.06.2012, passed by the 1st Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 12/2012.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.15,00,000/- with interest @ 6% per annum from the date of application.
3. The contention of the counsel for the appellants is that the deceased would had been entitled for compensation under the future prospects for the purpose of quantification of compensation. So also the Claimants would be entitled for more compensation under conventional head than what has been awarded. He further submits that the deduction made towards the ex-gratia payment received by the Claimants again is also not justified and the same deserves to be set-aside.
4. Mr. Sourabh Sharma appearing for the Insurance Company however opposing the appeal submits that the award seems to be fair, just and reasonable as the Claimant have been justifiably compensated and therefore there is no scope for interference with the impugned award and the appeal deserves to be rejected.
5. Having heard the contentions put forth on either side and on perusal of record what is undisputed is the date of accident i.e. 12.11.2009, the resultant death of the deceased Devendra Kumar Dhruw, the deceased being Assistant Grade-III in the Water Resources Department of the State Government. He was a permanent employee of the Government earning a monthly income of Rs.12,000/-. The vehicle involved in the accident and the same also being insured with the Insurance Company is also not in dispute.

6. Given the facts and circumstances of the case, the Claimants would be entitled for 30% of his income towards future prospects which of Rs.12,000/- would be Rs.3600/- bringing the monthly income to Rs.15,600/- and the yearly income at Rs.1,87,200/-, of which if 1/4th is deducted towards personal expenses, the amount would come to Rs.1,40,400/-, which if multiplied applying the multiplier of 14, the amount would come to Rs.19,65,600/-, which would be the amount towards the loss of dependency. It is ordered accordingly. The Claimants in addition shall also be entitled for additional amount of Rs.70,000/- under the conventional head to make the total compensation payable at Rs.20,35,600/- instead of Rs.15,00,000/- as awarded by the Tribunal.
7. So far as the deduction of the ex-gratia payment is concerned, it is by now settled that the ex-gratia payment received cannot be adjusted while quantifying the compensation as has been held by the Hon'ble Supreme Court in the case of ***"Reliance General Insurance Company Limited vs. Shashi Sharma and others"*** reported in ***(2016) 9 SCC 627***. Under the circumstances, the Claimants shall be entitled for entire amount of compensation as quantified in the preceding paragraphs. Hence the adjustments of ex-gratia payment also stands set-aside.
8. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.
9. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge