

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 216 of 2014

1. Samlu Baiga, aged about 26 years, son of Samaru Baiga
2. Fulwantin Bai, aged about 24 years, wife of Samlu Baiga

Both are resident of Village-Lup, Police Station – Chilphi, District Kabirdham (C.G.)

---- Appellants/Claimants

Versus

1. Manglu Baiga, aged about 22 years, son of Samaru Baiga, Vehicle Driver, resident of Village-Lup, Police Station- Chilphi, District Kabirdham (C.G.)
2. Smt. Kamla Bai, aged about 70 years, wife of late Y.V. Swami, resident of Chilphi, Tahsil-Bodla, P.S.- Chilphi, District Kabirdham (C.G.)
3. Branch Manager, Future General India Insurance Company Limited, Shop No.03, 2nd Floor, Maruti Business Park, Raipur (C.G.)

---- Respondents

For Appellants	:	Shri Basant Dewangan, Advocate
For Respondent No.1	:	None
For Respondent No.2	:	Shri Vijay K. Deshmukh, Advocate
For Respondent No. 3	:	Shri S.S. Rajput, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

22.10.2018

1. This is claimants' appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal (for short the 'Tribunal'), Kabirdham (Kawardha), C.G. vide award dated 21.10.2013, passed in Claim Case No.103 of 2012.

2. The Claimants/Appellants, unfortunate mother and father of deceased- Roop Singh, aged 5 years, claimed compensation of Rs.15,50,000/- by filing a claim petition under Section 166 of the Motor Vehicle Act for death of their son in the motor accident

3. The fact of the case is that on 02.06.2012 at about 08:00, Respondent No.1 driving the offending vehicle Tractor bearing registration No. CG-09 – C-5398 attached with Trolley bearing registration No. CG-09- C-5399 in a rash and negligent manner dashed the deceased near the turn of deceased's house and the deceased come under the wheel of Tractor, due which he died.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.51,000/- in favour of the Appellants/Claimants with simple interest @ 7.5% per annum from the date of application till its realization. The Tribunal has also directed that Respondents 1 and 2 are liable for payment of compensation to the Claimants/Appellants.

5. Learned counsel for the Appellants/Claimants submits that amount awarded by the Tribunal is very much on the lower side and needs to be enhanced suitably.

6. On the other hand, learned counsel for the Respondents supporting the impugned award submits that the amount awarded by the Tribunal is just and proper and needs no interference by this Court.

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

8. The Hon'ble Supreme Court in the matter of **Kishan Gopal and Another Vs. Lala and Others, (2014) SCC 244**, observed in para-36 as under:-

“36. After noting the submission made on behalf of TISCO in *Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197* that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was

directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000 should be added and thus total amount in each case would be Rs.2 lakhs.”

9. In the present case also, the deceased was 5 years of age and the Claimants are the young parents, therefore, in view of the decision in *Kishan Gopal* (supra), this Court is of the opinion that the Claimants/Appellants are entitled for a total sum of Rs.2,00,000/- as compensation. Since the Tribunal has already awarded Rs.51,000/-, after deducting the same, the Claimants/Appellants are held entitled for additional compensation of Rs.1,49,000/- with interest @ 7.5% per annum from the date of application till its realization.

10. In the facts and circumstances of the case, though the liability has been fastened upon the Respondents 1 and 2 (driver and owner) of the offending vehicle. However, Respondent No.3/Insurance Company is directed to pay the amount of compensation to the Claimants/Appellants and then recover the same from the driver and owner of the offending vehicle in accordance with law. However, rest of the conditions of the impugned award shall remain intact.

11. In the result, the appeal is allowed in part to the above extent.

12. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge