

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 462 of 2012**

1. Mukund Rathore S/o V.B. Rathore, Aged about 46 years,
2. Smt. Ranjana Rathore W/o Mukund Rathore, Aged about 37 years,
Both R/o Ward No. 15, Housing Board, Kumhari, Tahsil and Distt. Durg Chhattisgarh

---- Appellants**Versus**

1. Govind Kumar Sao S/o Singhram Sao, R/o. House No.A/127, Steel Nagar,Camp-1, Bhilai, Tahsil and District Bhilai Chhattisgarh
2. Sonu Sao S/o Roop Lal, R/o Contractor Colony, Bhilai, Tahsil And District Durg Chhattisgarh
3. Divisional Manager, New India Insurance Company Ltd. G.E. Road, Power House, Bhilai, Tahsil And District Durg Chhattisgarh

---- Respondents

For Appellants	:	Mr. Amiyakant Tiwari, Advocate
For Insurance Company	:	Mr. Raj Awasthi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****13/02/2018**

1. The present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 25.02.2012, passed by the 3rd Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh, in Claim Case No. 82/2011.
2. Vide the impugned award, the Tribunal in a death case of a 13 years old boy Karan Rathore has awarded a compensation of Rs.1,55,400/- with interest @ 7.5% per annum from the date of application.
3. While passing the impugned award, the Tribunal had also assessed contributory negligence towards the deceased to the extent of 40% and the amount of compensation was accordingly reduced from the total compensation assessed.

4. The contention of the counsel for the appellants is that the finding of contributory negligence is totally erroneous and perverse as the deceased was not the person driving the vehicle, he was an occupant of the said vehicle and therefore the finding of contributory negligence is not sustainable. He further submits that the amount of compensation otherwise also assessed by the Tribunal i.e. of Rs.2,59,000/- assessed by the Tribunal is also on the lower side and the same deserves for suitable enhancement.
5. The counsel for the Insurance Company Mr. Raj Awasthi however opposing the appeal submits that the finding of the Tribunal is fair, just and reasonable and the same is also a speaking order giving specific findings to each of the issues raised and thus there is no scope of interference and the appeal deserves for rejection.
6. Having heard the contentions put forth on either side and on perusal of record what is admitted is the date of accident which is 24.12.2009. The vehicle involved in the accident was an INDICA Car bearing registration No. CG/04/B/6393. The said car was hit by a MAX Pick-up Van bearing registration No. CG/04/JB/0716. The said Pick-up Van was duly insured with the respondent No.3-Insurance Company. What is also not in dispute is the fact that as a result of the accident the deceased Karan Rathore, aged around 13-14 years had died. What is also not in dispute is the fact that the deceased was an occupant of the vehicle and he was not driving the vehicle at the time of accident.
7. Given the aforesaid facts and circumstances of the case, particularly the fact that the deceased was an occupant of the Car and was not driving the vehicle himself is sufficient to show that he could not had

been in any manner responsible for the accident and therefore the finding of contributory negligence by the Tribunal is not sustainable and the same is accordingly set-aside. The opinion of this Court stands fortified by the judgment of Hon'ble Supreme Court in the case of "***T.O. Anthony vs. Karvarnan and Others***" reported in **(2008) 3 SCC 748**. It is held that the Claimants shall be entitled for the entire amount of compensation that would be assessed.

8. So far as the quantum of compensation is concerned, in the light of aforesaid admitted factual position, particularly the age of the deceased being 13-14 years, this Court is of the opinion that it is a case, which stands squarely covered by the decision of the Hon'ble Supreme Court in the case of "***Kishan Gopal and Another vs. Lala and Others.***" reported in **(2014) 1 SCC 241** so also the judgment of the Hon'ble Supreme Court in the case of "***Lata Wadhwa and Others Vs. State of Bihar and Others***" reported in **(2001) 8 SCC 197**.
9. Accordingly, this Court assesses the notional income of the deceased at Rs.30,000/- and the multiplier applied would be 15 to make the total compensation payable at Rs.4,50,000/- and the Claimants would also be entitled for a compensation of Rs.50,000/- under the conventional head to make the total compensation payable at Rs.5,00,000/-.
10. It is ordered accordingly that the Claimants shall be entitled for an amount of Rs.5,00,000/- instead of Rs.1,55,400/- as awarded by the Tribunal.

11. Since the finding of contributory negligence has been set-aside, the Claimants shall be entitled for the entire amount of compensation awarded.
12. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal.
13. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved