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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1153 of 2011

Smt. Kalabai Hapka @ Batti Wd/o late Gangu Ram, aged about 37 years, R/o village Bangapal, Tahsil Geedam, District South Bastar Dantewada (CG)

---- Appellant

Versus

1. Ghasiram Kashyap S/o Shri Mangdoo Ram Kashyap, R/o village Bhootpadar, Tahsil Geedam, District South Bastar Dantewada (CG) (Driver of offending Tractor No. CG 18-G/0414 & Trolley No. CG 18-G/0415)
2. Munna Ram Hapka S/o Shri Lachhu Ram Hapka, R/o village Bangapal, Tahsil Geedam, District South Bastar Dantewada (CG) (Owner of offending Tractor No. CG 18-G/0414 & Trolley No. CG 18-G/0415)
3. The New India Insurance Company Limited through Branch Manager, Branch Office near Jhankar Talkies, Jagdalpur, District Bastar (CG) (Insurer of offending Tractor No. CG 18-G/0414 & Trolley No. CG 18-G/0415)

---- Respondents

For Appellant	:	Shri Shrawan Agrawal, Advocate
For Respondent no.3	:	Shri Sourav Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

16/01/2018

Present is a claimant's appeal under Section 173 of the Motor Vehicles Act assailing the award dated 25.03.2011 passed by the Motor Accident Claims Tribunal, South Bastar, Dantewada (CG) in Claim Case No.62 of 2009. Vide the impugned award, the Tribunal in a death case of a 12 years old boy

Rajmal Hapka under Section 166 of the MV Act has awarded compensation of Rs.50,000/- that too under no fault liability.

2. The Tribunal while passing the impugned award has exonerated the Insurance Company of its liability and has ordered that the amount of no fault liability would be paid by the owner and the driver.

3. Counsel for the appellant assailing the award submits that it is a case where the tractor was duly insured with respondent no.3 and there was sufficient evidence to show that the vehicle was not being used for a purpose other than agriculture, therefore, the exoneration of Insurance Company is bad in law. He further submits that the amount of compensation awarded by the Tribunal is too meager an amount and the same deserves to be suitably enhanced.

4. Counsel for the Insurance Company, however, opposes the appeal on the ground that the deceased was a 12 years old boy and under no circumstances, a 12 years old boy could have been engaged for agricultural work, therefore, the Insurance Company has rightly been exonerated of its liability. He further submits that it is a case where the Tribunal has also rightly assessed the compensation based on the evidence which has come on record and there is no scope of enhancement. Thus, prayed for rejection of the appeal.

5. Having heard the contentions put forth on either side and on perusal of record, the admitted factual matrix of the case shows that the accident occurred when the deceased who was a 12 years old boy travelling in the tractor. It is beyond imagination that a 12 years old boy would have been engaged by the owner for agricultural purpose or to work as a labour.

6. In the given facts, the finding of the Tribunal in exonerating the Insurance Company cannot be found fault with and the liability of payment of compensation shall remain upon the owner and the driver.

7. So far as the quantum of compensation is concerned, this Court is of the opinion that the issue involved in the instant case stands squarely covered by the decision of the Supreme Court in the case of **Kishan Gopal and another Vs. Lala and others** reported in (**2014) 1 SCC 244** wherein, in a case of death of a minor child, the Supreme Court has fixed the notional income at Rs.30,000/- and applied the multiplier of 15 making the compensation towards loss of dependency at Rs.4,50,000/-. In addition, an amount of Rs.50,000/- under the conventional head was also granted making the total compensation at Rs.5,00,000/-.

8. Applying the same principle and analogy, this Court is also inclined to enhance the compensation payable to the claimant herein in similar terms and quantifies the compensation at Rs.4,50,000/- towards loss of dependency and Rs.50,000/- under the conventional head. Thus, the claimant in the instant case shall be entitled for a total compensation of Rs.5,00,000/- in stead of Rs.50,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal. The liability of payment of compensation shall remain upon respondents 1 & 2 i.e. owner and driver of the offending vehicle.

9. The appeal thus stands allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola