

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1049 of 2011**

Bishahuram, Aged about 40 years, S/o. Late Mukut Ram, R/o. Village Dhabapar, Police Station Nandghat, Tahsil Navagarh, District Durg Chhattisgarh

---- Appellant**Versus**

1. Kanhaiya S/o. Guha Ram Satnami, Aged about 40 years, R/o. Village Navapara, Shakti Ward, Bhatapara, District Raipur Chhattisgarh (Driver)
2. Atul, S/o. K.K. Mundda, R/o. Mandi Road, Bhatapara, District Raipur Chhattisgarh (Owner)
3. The Oriental Insurance Company Limited, Through: Branch Manager, Branch Office, Near Rajeev Plaza, Bus Stand, District Bilaspur Chhattisgarh (Insurer)
4. Shriamati Kamla Bai, W/o. Sunder Lal Satnami, Aged about 50 years, R/o. Village Dhabapar, Tahsil Navagarh, District Durg Chhattisgarh (So called Claimant)

----Respondents

For Appellant	:	Mr. Shobhit Koshta, Advocate under instructions of Mr. Vishnu Koshta, Advocate
For Respondent No.4	:	Mr. R.K. Pali, Advocate under instructions of Mr. P.P. Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****19/01/2018**

1. Present is an appeal by the Claimant under Section 173 of the Motor Vehicles Act seeking enhancement of the compensation. The challenge in the instant appeal is the award dated 27.04.2011, passed by the Additional Motor Accident Claims Tribunal, Bemetara, District Durg, Chhattisgarh (as it then was), in Claim Case No. 61/2011.
2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.2,48,000/- of which the Tribunal has ordered

for distribution of the said award between the appellant herein and the respondent No.4 Kamla Bai, the second wife of the deceased.

3. The fact of the case in brief is that the deceased Mukut Ram Satnami met with an accidental death on 03.05.2010 when moving on his motorcycle was hit by a Matador bearing registration No. CG/04/JB/8357, which was owned by the Respondent No.2-Atul and driven by the respondent No.1 Kanhaiya. The appellant herein had filed a claim application under Section 166 of Motor Vehicles Act, which stood allowed vide order dated 27.04.2011.
4. The contention of the counsel for the appellant is that the amount of compensation awarded is on the lower side and the same deserves suitable enhancement. It was further assailed that the multiplier applied is also not in accordance with the judicial pronouncement made by the Hon'ble Supreme Court in the recent past and the same has therefore to be rightly applied and the compensation be enhanced suitably.
5. Counsel appearing for the respondent No.4 on the contrary submits that he has also filed a cross-objection before this Court on 21.02.2012 seeking for the proper apportionment of the award provided by the Tribunal. According to Mr. Pali, Advocate since the respondent No.4 was the second wife and who was alive when the deceased had died and that there being no dispute so far as there being a husband-wife relationship between the deceased Mukut Ram Satnami and the respondent No.4, she should have been granted major portion of share from the award passed by the Tribunal.
6. He relies upon the judgment of the Division Bench in MAC No. 559/2014, decided on 24.07.2017. There is no representation on

behalf of the Insurance Company though served and represented in this Court today. Since the appeal is of the year 2011, this Court proceeds to decide the case in absentia of any representation on behalf of the Insurance Company.

7. Considering the date of accident, if we look at the income assessed by the Tribunal, this Court feels that in May 2010 i.e. the period of accident, the minimum wages, which an unskilled labour would had been earning would be roughly around Rs.200/- a day that makes it Rs.6000/- a month, however the Tribunal has assessed the income only at Rs.4500/-, which in the opinion of this Court does not seems to be reasonable and this Court assesses the monthly income of the deceased at Rs.6000/- a month, which makes it Rs.72,000/- annually. Since the Claimant was of about 65 years, he would not be entitled for any compensation under the future prospects. 1/3 of the said amount has to be deducted towards personal expenses, which would bring the amount to Rs.48,000/-, which if multiplied applying the multiplier of 7 instead of 6 as applied by the Tribunal, the amount would come to Rs.3,36,000/-. It is ordered accordingly that the Claimant shall be entitled for a loss of dependency of Rs.3,36,000/- instead of Rs.2,16,000/-.
8. So far as the compensation under the conventional head is concerned, this Court is of the opinion that keeping in view the recent decision of the Hon'ble Supreme Court in the case of ***“National Insurance Company Limited vs. Pranay Setthy and Others”*** decided on 31.10.2017, in Civil Appeal No. 25590/2014, the Claimant shall be entitled for a lump sum amount of Rs.70,000/- towards the conventional head to make the total compensation

payable at Rs.4,06,000/- instead of Rs.2,48,000/- as has been awarded by the Tribunal.

9. As regards the cross-objection filed by the respondent No.4, this Court does not find any strong case made out by the respondent No.4 for the reason that it is an appeal by the Claimant himself, who had filed claim application before the Claims Tribunal. What is also apparent is that the award in the instant case was dated 27.04.2011 and the Claimants had filed the present appeal only in the month of October, 2011 i.e. after about 7 months from the date of accident. During these 7 months period also the respondent No.4 did not think it proper to file an appeal against the finding of the Tribunal of sharing the awarded amount equally.
10. Further, it is only by way of Cross-objection/appeal filed in February, 2012 for the first time, the respondent No.4 has raised a dispute so far as the apportionment is concerned. This Court does not find any strong case made out for interfering with the findings of the Tribunal. So far as the judgment relied upon by the counsel for the respondent No.4 is concerned, that was a case where the appeal was preferred by the second wife unlike in the present case where the appeal has been filed by the Claimant himself.
11. Given the facts and circumstances of the case this Court affirms the finding of the Tribunal in sharing of the award equally between the appellant and the respondent No.4.

Sd/-
(P. Sam Koshy)
Judge