

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 146 of 2014

1. Shamsheer Alam S/o Sadik Ansari, aged about 30 years
2. Tajbun Bibi W/o Shamsheer Alam, aged about 25 years
Both R/o Village- Anraj Nawadeeh, Post- Anraj Nawadeeh Garhawa (Jharkhand), At post- Budhwari Bazar Korba, Police Station, Tahsil & District (Revenue & Civil)- Korba (C.G.)

---- Appellants/Claimants

Versus

1. Ravindra Prasad Yadaw S/o Mundrika Prasad Yadaw, aged about 42 years, R/o Kalyan, Police Station- Bhaunathpur, District Garhawa (Jharkhand)
(Driver)/Non-applicant No.1
2. Arun Kumar Gupta S/o Dinesh Prasad Gupta, R/o Main Road Garhawa, District Garhawa (Jharkhand)
(Owner)/Non-applicant No.2
3. The Oriental Insurance Company Limited Korba, Gitanjali Bhawan Korba, Police Station, Tahsil & District (Revenue & Civil) Korba (C.G.)
(Insurer)/Non-applicant No.3

---- Respondents/Non-applicants

For Appellants	:	Shri Anand Kesharwani, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Sandeep Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

19.02.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal (FTC) Korba (C.G.) vide award dated 11.09.2013 passed in Claim Case No. 01 of 2013.
2. The Claimants/Appellants, unfortunate father and mother of deceased- Ku. Kajal Khatun aged about 7 years, claimed compensation of Rs.12,50,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of their

daughter- Ku. Kajal Khatun in the motor accident.

3. Brief facts of the case, in brief, are that on 13.02.2010 at about 01:30 pm in village Anraj Nawadeeh near Garhwaha Road, the offending vehicle Bus bearing registration No. BR-15/P/0119, which was being driven by non-applicant No.1, owned by non-applicant No.2 and insured with non-applicant No.3, in a rash and negligent manner, dashed Ku. Kajal Khatun, as a result thereof, Ku. Kajal Khatun sustained grievous injuries and died on the spot.

4. The learned Tribunal, in the impugned award, has awarded a compensation of Rs.1,27,500/- in favour of the Appellants/Claimants with interest @ 8% per annum from the date of accident till realization. Before Tribunal it was proved by non-applicant No.1 and 2 that at the time of accident, the offending vehicle was insured with non-applicant No.3, but it was not proved by them that non-applicant No.1, the driver of the offending vehicle, was having a valid and effective licence. Therefore, the Tribunal has fastened liability on non-applicant No. 1 and 2 (driver & owner) jointly and severally to pay compensation to the Claimants and ordered that as the interim compensation has been deposited by non-applicant No.3, it has the right to recover the same from non-applicants No. 1 and 2.

5. Learned counsel for the Appellants/Claimants submits that the deceased was minor aged about 7 years at the time of accident and had not started earning. He further submits that in view of the decision in the matter of Oriental Insurance Co. Ltd. Vs. Smt. Kevra Bai Dewangan, 2009 (1) ACCD 102 (C.G.), the Tribunal assessed the notional income for a non-earning minor deceased at Rs.15,000 per annum which is on the lower side. He also submits that no amount towards future prospect has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

6. On the other hand, learned counsel for Respondent No.3/Insurance Company opposes the contention made by learned counsel for the Appellants and submits the accident took place in the year 2010 and the compensation of Rs.1,27,500/ was awarded on the scale and the value of rupee in the year 2010.

Therefore, the compensation awarded does not call for any enhancement.

7. Heard learned counsel for the parties and perused the records.

8. Considering the facts and circumstances of the case, particularly the fact that it is not disputed by both the parties that deceased- Ku. Kajal Khatun was a minor aged about 7 years on the date of accident and had not started earning, had she been alive, she would have certainly contributed substantially to the family of Appellants by working hard, therefore, in the opinion of this Court, ends of justice would be served, if the income of the deceased is considered as Rs.36,000/- per annum on notional basis. Further, considering the age i.e. 7 years, as per Second Schedule of the Motor Vehicles Act, 1988, the multiplier of 15 is correct and the decisions of the Hon'ble Supreme Court in matters of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** and **National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680**, the Claimants/Appellants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased	Rs.36,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.36,000/- + Rs.14,400/-) Rs.50,400/-
3.	50% deduction towards personal and living expenses of Deceased	(Rs.50,400/- – Rs.25,200/-) Rs.25,200/-
4.	Multiplier of 15 applied	Rs.25,200/- x 15 = Rs.3,78,000/-
5.	Towards loss of estate and funeral expenses	Rs.30,000/-
	Total Compensation	Rs.4,08,000/-

9. Since the Tribunal has already awarded Rs.1,27,500/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,80,500/- with interest @ 8% per annum from the date of accident till realization. Keeping in view of the decision of the Hon'ble

Supreme Court in the matter of ***Manuara Khatun and others Vs. Rajesh Kumar Singh and others, (2017) 4 SCC 796***, this Court feels it proper to order for pay and recover in this case. Hence, the Insurance Company/non-applicant No.3 is directed to pay the awarded sum to the Claimants within a period of two months from today and then recover the same from the driver and owner (non-applicant No.1 and 2) of the offending vehicle as per law laid down in ***Manager, National Insurance Company Limited Vs. Saju P. Paul & Anr., (2013) 2 SCC 41***. However, rest of the conditions of the impugned award shall remain intact.

10. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

11. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge