

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 730 of 2014**

1. Future General India Insurance Company Ltd. Thru- Divisional Manager, Divisional Office, 2nd Floor, B-Block, Mruti Business Park, Near Dhuppad Petrol Pump, Raipur, P.S. Saraswati Nagar, Distt. Raipur (C.G.) (**Insurer**)

---- Appellant**Versus**

1. Smt.Ahilya Tripathi And Ors. W/o Late Laxmiprasad Tripathi Aged About 48 Years, W/o late Laxmiprasad Tripathi, profession house wife.
2. Laxmi Prasad Tripathi S/o Ramswaroop Tripathi Aged About 52 Years,
3. Ku. Alpa Tripathi D/o Laxmiprasad Tripathi Aged About 16 Years (Minor),

Minor Through respondent No. 1 Mother Smt. Ahilya Tripathi, R/o Sector-1, Bindeshwari Mahadev Mandir, Behind Vidhya Hospital, Shankar Nagar, P.S. Civil Line, Civil and Revenue Distt. Raipur (C.G.) (**Claimants**)

4. Ankit Dubey S/o R.N. Dubey, Profession vehicle owner, R/o Devendra Nagar, Raipur, P.S. Devendra Nagar, Tah. Raipur, Distt. Raipur (C.G.) (**Owner of vehicle No. CH04 JC 1250**)

---- Respondents

For Appellant	:	Shri Rohitashva Singh, Advocate.
Respondent No. 4	:	Shri Akash Shrivastava, Advocate on behalf of Shri Anumesh Shrivastava.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****14/05/2019**

1. This appeal is preferred by the Insurance Company/non-applicant No. 2 under Section 173 of the Motor Vehicles Act, 1988 against the award dated 09/05/2014 passed by Chief Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No. 101/2011

awarding total compensation of Rs. 5,38,000/- with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severally.

Aggrieved by this award Insurance company filed this appeal only challenging the quantum on conventional head awarded by the learned Tribunal, it is not permissible under the structure formula under section 163(A) second schedule of Motor Vehicles Act, 1988.

2. As per claim petition, on 16/05/2011 deceased Amar Tripathi aged about 22 years earning Rs. 3,200/- per month working as driver, was driven Truck Tata S bearing No. CG04 JC 1250 when he was returning from Balodabazar to Raipur near Rasota his vehicle was uncontrolled and dashed with a Tree. As a result of this accident Amar Tripathi sustained grievous injury and died on the spot. At the time of accident the said vehicle was owned by respondent no. 4/non-applicant No. 1 and insured with appellant/non-applicant No. 2.
3. On claim petition filed by claimants' parents and sisters of deceased under section 163(A) of Motor Vehicles Act, 1988 the Tribunal considered the evidence led by the parties and passed an award as mentioned above.
4. Learned counsel for the appellant/Insurance Company submits that he has raised various grounds in the memo of appeal, however, he is not pressing of those grounds and is assailing the award of the Tribunal in the grounds :-

i) that the learned Tribunal has wrongly considered Rs. 2,25,000/- for love and affection in favour of applicant No. 1, 2 & 3 which is not sustainable as the claim petition are filed by the claimants under section 163 (A) of the Motor Vehicles Act, 1988 before the Tribunal.

ii) that the amount awarded under the conventional heads Rs. 25,000/- for funeral expense also being on the higher side deserves to be reduced suitably.

5. On the other hand, learned counsel for the respondents supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation. He further submits that if any amount reduced on love and affection as awarded by the learned Tribunal, looking to the age and job of the deceased future prospect to be considered 40% as per decisions of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***
6. Heard learned counsel for the parties and perused the material available on record.
7. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs. 3,200/- per month as driver but no documentary or oral evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the notional income of the deceased is considered as Rs 3,000/- per month by learned Tribunal is just and proper. Further, considering the age of the deceased i.e. 22 years, the dependency, the nature of his job, dependency,

provisions of Sec 163(A) and the second schedule there under keeping in view the decisions of the Hon'ble Supreme Court in **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 are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Notional income of the deceased @ Rs 3000 per month.	(Rs. 3000x12) = Rs. 36000 per annum
02.	40 % of (i) above to be added towards future prospects.	(Rs. 36000 + 14400) = Rs. 50,400/-
03.	1/2 deduction towards personal and living expenses of the deceased	(Rs. 50400 - 25200) = Rs. 25,200/-
04.	Multiplier of 16 to be applied	(Rs. 25200 x 16) = Rs. 4,03,200/-
05.	Towards loss of estate and funeral expenses	Rs. 30,000/-
	Total compensation	Rs. 4,33,200/-

8. In the result, the appeal is allowed in part with modification in the impugned award to the extent that appellant/non-applicant No. 2 is liable to pay a sum of Rs. 4,33,200/- with interest @ 9% per annum as awarded by the Tribunal to the claimants. If any amount in excess of the above liability has been deposited by the Insurance Company and not disbursed to the claimants, the same shall be refunded to the Insurance Company.
9. However, rest of the conditions of the impugned award shall remain intact.

-Sd/-
(Gautam Chourdiya)
Judge