

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1065 of 2012**

1. Vijay Verma, S/o Sabitram Verma Aged About 27 Years Ward No.2, Naya Dhaba, Thana- Lalbagh, Distt. Rajnandgaon C.G.
2. Nuri Bai W/o Vijay Verma Aged About 24 Years Ward No.2, Naya Dhaba, Thana- Lalbagh, Distt. Rajnandgaon C.G.
3. Ku. Kusum D/o Vijay Verma Aged About 2 Years Minor, Thru-Father- Vijay Verma, R/o Ward No.2, Naya Dhaba, Thana- Lalbagh, Distt. Rajnandgaon C.G.

---- Appellants**Versus**

1. Noharram Sahu, S/o Keju Ram Sahu Aged About 46 Years Deendayal Nagar, Behind Khan Kirana Shop, Chikli, Thana- Kotwali, Tah. And Distt. Rajnandgaon C.G.
2. Chief Executive Officer Jila Panchayat, Dantewada, Distt. Dantewada C.G.

---- Respondents

For Appellants	: Shri Shalvik Tiwari, Advocate
For Respondent No.1	: Shri Roop Naik, Advocate
For Respondent No.2	: None present.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****24/01/2019**

This appeal arises out of award dated 08.10.2012 passed by the Motor Accident Claims Tribunal (in short 'The Tribunal') in claim case No. 105/2011 awarding compensation of Rs. 80,000/- with interest at the rate of 6% per annum in favour of the appellants/claimants for the death of deceased Ajay Kumar @ Bittu.

2. Facts of the case in brief are that on 11.04.2011, Master Ajay

Kumar @ Bittu, aged about 4 years, was playing in front of his house at that time respondent No.1 Nohar Ram Sahu who was driving the vehicle bearing registration No. CG02/4018 rashly and negligently, dashed the deceased Ajay as a result of which he sustained grievous injuries and died on the spot. A claim petition was filed by the appellants who happened to be the legal heirs-mother, father and sister of the deceased claiming a compensation of Rs. 60,50,000/-, under various heads *inter alia* pleading that the deceased died due to negligent driving of the offending vehicle and he was the only son of his parents. Claimants have lost their only son and further there is no chance in future also that the appellants 1 & 2 will have the privilege of having the son.

3. Pleading of the claimants have however been denied by the respondents. After evaluating the evidence available on record, the Tribunal has awarded Rs.80,000/- with interest at the rate of 6% per annum in favour of the appellants/claimants.

4. Counsel for the appellant/claimants submit that the compensation awarded by the Tribunal is on the lower side and needs to be enhanced suitably. He further submits that the learned Tribunal has also failed in not taking the future prospects as per the decision of the Apex Court in the matter of ***National Insurance Company Ltd. Vs. Pranay Shetty Sethi (2017) 16 SCC 680*** wherein the learned Tribunal has committed gross error and passed contradictory order which is not sustainable in the eye of law. Learned Tribunal had granted lump sum amount without considering the schedule as mentioned in Motor Vehicle Act, under the other head also. Learned

Tribunal has awarded a very meagre amount. The Tribunal ought to have granted some reasonable amount and further under other head, very less amount has been awarded in favour of the claimant. He has placed reliance on the recent judgment of the Apex Court in the matter of ***Krishna Gopal & Another Vs. Lala and Others, 2013 AIR SCW 5037.***

He further submits that in Motor Vehicle Act, the amendment is after this accident but in the light of ***National Insurance Company Limited Vs. P.Suresh and Others, MANU/TN/5639/2018*** vide judgment dated 19.09.18 of High Court of Madras, the appellant/claimants are also entitled for enhanced compensation of Rs. 5,00,000/-.

5. Respondents 1 & 2 has remained absent after service of notice.
6. Heard counsel for the appellants/claimants and perused the documents on record.
7. Now this court shall examine as to whether the compensation of Rs. 80,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the case.
8. From the pleadings of the respective parties and overall evidence on record, it is clear that the accident occurred with the offending vehicle which was owned by respondent No.2 Chief Executive Officer, Jila Panchayat Dantewada and was being driven by respondent No.1. Evidence further goes to show that the offending vehicle was driven in a rash and negligent manner. It is clear from the evidence of the appellants that the deceased was their only son and

the appellant had opted for sterilization operation and there is no chance in future that appellant will have the privilege of having a child. In the light of ***Krishna Gopal and Another Vs. Lala and Others*** (supra) and national Insurance Company Limited Vs. P. Suresh and Others and the amendment in Motor Accident Claims Tribunal, compensation of Rs. 5,00,000/- is just and proper. Since the Tribunal has awarded Rs. 80,000/- after deducting the same, claimants are entitled for enhancement of Rs. 4,20,000/-. This additional amount of compensation shall carry interest @ 6% per annum from the date of order till its realization. The amount received by the appellants/claimants, shall be adjusted in the enhanced sum. Appeal is allowed in part with the modification in the impugned award as indicated above.

Sd/-

(Rajani Dubey)
Judge

