

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 99 of 2019**

- The Oriental Insurance Company Ltd., DO - 3, Lucknow Office Near Matiyari Crossing Beside Union Bank Of India, Faizabad Road, Lucknow U.P., Through its Local Office - Divisional Manager, The Oriental Insurance Company Ltd. 1st Floor, Rama Trade Center, Opposite Rajeev Plaza, Bus Stand, Bilaspur, District Bilaspur Chhattisgarh.

---Petitioner**Versus**

1. Dhannulal Kaiwart S/o Jhangalu Kaiwart, Aged About 28 Years
2. Kumari Durga Kaiwart, D/o Dhannulal Kaiwart, Aged About 8 Years
3. Suraj Kaiwart S/o Dhannulal Kaiwart, Aged About 2 Years

Respondent Nos. 2 & 3 are minor and Represented through Natural Guardian Father Dhannulal Kaiwart, Aged About 28 Years,

All are R/o Bhothidih, Gram Panchayat Lawar, Tahsil And Police Station Masturi, District Bilaspur Chhattisgarh.

4. Kaptan Singh S/o Ranbahadur Sinkgh R/o Jamwari, Police Station Mushafir Khana, Janpad Sultanpur U.P. (Driver Of Truck Bearing No. UP32 -Z-3276) Through - Owner Avdesh Kumar Mishra, S/o Late Chhedilal Mishra, R/o 103/82 Sundarbag, Police Station Kaisharbag, Janpat - Lucknow U.P.
5. Avdesh Kumar Mishra S/o Late Chhedilal Mishra R/o 103/82 Sundarbag, Police Station- Kaisharbag, Janpat - Lucknow U.P. (Owner Of Truck Bearing No. UP 32-Z-3276)

---- Respondents

For Petitioner
For Respondents

Shri Sandeep Shrivastava, Advocate.
None.

Hon'ble Shri Justice Gautam Chourdiya
Order on Board

25/07/2019

1. Heard on **I.A. No.1**
2. This is an application for condonation of delay of 106 days in filing the Review Petition.
3. For the reasons mentioned in the application which is duly supported by affidavit, the same is allowed and delay in filing the Review Petition is condoned.
4. Also, heard on admission.
5. Counsel for the petitioner submits that since claim petition was filed under Section 163A of the Act, compensation was to be awarded as per structured formula given under the said Section and no amount towards future prospect can be granted in such a claim petition whereas this Court vide order dated 04.12.2018 passed in MAC No.362 of 2014 has granted 40% towards future prospect which is not permissible under the law. He further submits that as per latest notification issued by the Central Government amending 2nd Schedule under Section 163A of the Motor Vehicles Act, the maximum compensation to be awarded in a death case is Rs. 5 lacs whereas this Court vide order dated 04.12.2018 passed in MAC No.362 of 2014 has awarded a compensation of Rs.6,41,200/- which is required to be reduced accordingly.
6. So far as the issue of grant of future prospect is concerned, this Court considering the judgment of the Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the age of the deceased and the

nature of her job granted 40% towards future prospect, which cannot be faulted with.

7. As regards the application of the latest amendment in 2nd Schedule under Section 163A of the Act, though no such ground is raised in the review petition, however, admittedly in this case the accident happened on 04.03.2012 and the notification was issued on 22nd May, 2018, as such compensation is to be assessed on the basis of law in force at the time of accident and the said notification cannot be made effective retrospectively. In the matter of ***State of Punjab and others vs. Bhajan Kaur and others, (2008) 12 SCC 112***, while considering the issue of application of the Act of 1988, prospective or retrospective, the Hon'ble Supreme Court observed as under:-

- “8. Section 92-A of the 1939 Act provided for payment of a sum of Rs.15,000 by way of no fault liability. It was raised to Rs.25,000 by reason of Section 140 of the 1988 Act. However, with effect from 14-11-1994, by amending Act 54 of 1994, the quantum of the amount payable has been raised to Rs.50,000. Indisputably, under the 1939 Act only a sum of Rs.15,000 was payable by way of no fault liability. The question which arises for consideration in this appeal is as to whether it has a retrospective effect. In our opinion, it does not.
- 9. A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of the rule of law.
- 10. Section 92-A of the 1939 Act created a right and a liability on the owner of the vehicle. It is a statutory liability. Per se it is not a tortious (*sic* tortious) liability. Where a right is created by an enactment, in the absence of a clear provision in the statute, it is not to be applied retrospectively.

- 11.** Ms Arora, however, has drawn our attention to a decision of the Kerala High Court in *United India Insurance Co. Ltd. v. Padmavathy*, 1990 ACJ 751 (Ker). The Kerala High Court referred to a decision of this Court in *M.K. Kunhimohammed v. P.A. Ahmedkutty*, (1987) 4 SCC 284 wherein the following observations were made: (SCC p. 295, para 14)

“14. Having regard to the inflationary pressures and the consequent loss of purchasing power of the rupee we feel that the amount of Rs.15,000 and the amount of Rs.7,500 in the above provisions appear to have become unrealistic. We, therefore, suggest that the limits of compensation in respect of death and in respect of permanent disablement, payable in the event of there being no proof of fault, should be raised adequately to meet the current situation.”

- 12.** In *Padmavathy* the Kerala High Court held: (ACJ p. 756, paras 11-12)

“11. The said suggestion of the Supreme Court was given due respect by the law-making machinery when the Bill was finally introduced in Parliament. This fact can be discerned from the Statement of Objects and Reasons prefaced in the new Act. Therefore, in effect Parliament has only retained the same right which was conferred on the victims through Chapter VII-A of the repealed Act. The difference in the quantum of compensation is only intended to make the right realistic and on a par with the amount fixed earlier. Hence Section 6 of the General Clauses Act would not impede the enforcement of Section 140 of the new Act in relation to an accident which occurred prior to the coming into force of the new Act.

12. For yet another reason, we can support the said conclusion. Section 6 of the General Clauses Act permits switching over to the repealed Act only if a different intention does not appear in the new statute. Such a different intention can be discerned from the new Act. It is in Chapter X of the new Act that provisions regarding 'no fault liability' have been included. The Chapter starts with Section 140 and ends with Section 144. The last section reads as follows: 'The provisions of this Chapter shall have effect notwithstanding anything contained in any

other provision of this Act or of any other law for the time being in force.' The different intention manifested in the new Act is that the provisions in Chapter X should get predominance over all other laws. The provisions contained in that Chapter must be given effect to notwithstanding any contrary provision in any other law including Section 6 of the General Clauses Act. All other provisions, therefore, must yield to the provisions contained in Chapter X of the new Act. This is the legislative intention manifested through Section 144 of the new Act."

In the decision of the Punjab and Haryana High Court in *Mosmi v. Ram Kumar*, 1992 ACJ 192 (P&H), reliance has been placed upon the judgment of the Kerala High Court. With the greatest of respect to the learned Judges of the Kerala and Punjab and Haryana High Courts, we could not persuade ourselves to agree with the said view.

- 13.** No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing of the claim petition arises. As indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force on or about 1-7-1989"

- 8.** In view of above, the review petition being without any substance is liable to be dismissed at the admission stage itself and is, accordingly, dismissed.

Sd/-

Gautam Chourdiya
Judge