

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 640 of 2015**

1. Rajkumar, S/o Lakhanpuri Aged About 35 Years R/o Village Sankari, P.S. Gundardehi, Tah. Gundardehi, District- Balod, Chhattisgarh
2. Smt. Pushpa Goswami W/o Rajkumar Goswami Aged About 30 Years R/o Village Sankari, P.S. Gundardehi, Tah. Gundardehi, District- Balod, Chhattisgarh

---- Appellants**Versus**

1. Mahesh Singh, S/o Sahukar Singh Aged About 35 Years R/o Naleka Nagla, P.S. Saighal, District- Rosa, Rajsthan, Presently R/o Thana-Para, Ward No. - 10, Pakhanjur, District- Kanker, Chhattisgarh
2. Kanker Roadways Office At Gandhi Udyan, Civil Lines, Raipur District- Raipur, Chhattisgarh
3. New India Co. Ltd. Through Divisional Manager, First Floor, Chauhan Estate, G.E. Road, Bhilai, District : Durg, Chhattisgarh

---- Respondents

For Appellants (Claimants)	: Shri Bharat Gulabani, Advocate on behalf of Shri Amiyakant Tiwari, Advocate
For Respondent- 3	: Shri Qamrul Aziz, Advocate
For Respondents- 1 and 2	: None appears

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****28.06.2019**

1. Appellants/claimants, parents of deceased Ku.Ragini, aged about 8 years have preferred this appeal under Section 173 of Motor Vehicles Act, 1988 challenging impugned award dated 03.03.2015 passed by learned Motor Accident Claims Tribunal, Balod (for short, 'Claims Tribunal') in Claim Case No.1200131 of 2014 whereby learned Claims Tribunal allowed claim application in part and awarded a total sum of Rs.1,80,000/- as compensation in death case.

2. Brief facts relevant for disposal of this appeal are that on 16.09.2014 when Ku.Ragini, aged about 8 years was going to her uncle's house, at that

relevant time, one bus bearing No.CG 04 E-1638 (hereafter, referred to as 'offending vehicle') driven by non-applicant 1 dashed Ku.Ragini and caused accident. In the aforementioned accident, she suffered grievous injuries over her person and succumbed to those injuries.

3. Claimants who are parents of deceased filed claim application before competent Claims Tribunal claiming Rs.11,00,000/- as compensation. Non-applicant 1 even after service of notice did not appear before learned Claims Tribunal and proceeded *ex-parte*.

4. Owner of offending vehicle denied pleadings in claim application and further pleaded that on the date of accident offending vehicle was insured with non-applicant 3/Insurance Company and therefore, liability if any, was with Insurance Company and it is liable for payment of compensation.

5. Non-applicant 3/Insurance Company submitted reply to claim application and pleaded that amount claimed in claim application is highly exaggerated and there is violation of conditions of Insurance Policy. Hence there is no liability to pay amount of compensation, if any.

6. Learned Claims Tribunal on appreciation of evidence and material placed on record by respective parties, has held that accident took place due to rash and negligent driving by driver of offending vehicle, non-applicant 1, there was no violation of conditions of Insurance Policy and awarded a total sum of Rs.1,80,000/- as compensation.

7. Learned counsel appearing for appellants/claimants submits that learned Claims Tribunal awarded less amount of compensation ignoring the fact that deceased was a child of 8 years on the date of accident and she

could have supported the family after attaining her age of majority. He placed reliance on decision of Hon'ble Supreme Court in the matter of **Kishan Gopal & another Vs Lala and others** reported in 2014(1) SCC 244 wherein compensation of Rs.5,00,000/- has been awarded in case of death of a child and submitted that compensation awarded by learned Claims Tribunal in the case is not just and reasonable, it is on lower side and required to be enhanced. He further submits that amount awarded by learned Claims Tribunal under other heads is also on lower side and it requires to be enhanced appropriately.

8. On the other hand, learned counsel for respondent-Insurance Company supported the award and submitted that amount awarded by learned Claims Tribunal is just and proper and needs no interference by this Court as the deceased was only 8 years old and was not an earning member.

9. I have heard learned counsel for the parties and perused records.

10. Only point which requires consideration of this Court is whether learned Claims Tribunal has awarded just and reasonable amount of compensation to claimants or not ?

11. In the matter of **Kishan Gopal** (supra), Hon'ble Supreme Court considering its earlier decision in the matter of **Lata Wadhwa Vs State of Bihar** reported in 2001(8) SCC 197 awarded an amount of Rs.5,00,000/- as compensation by assessing income of deceased child on notional basis as Rs.30,000/- per annum on the ground that rupee value has come down drastically from the year 1994. In the matter of **Lata Wadhwa** (supra), it was observed by Hon'ble Apex Court that though in case of death of a child on

account of injuries suffered in a motor vehicle accident, compensation could not be awarded by assessing income of child on notional basis and applying multiplier, but at the same time, it is to be kept in mind that loss of a child cannot be equated in terms of money and therefore, some reasonable amount of compensation should be awarded to the parents. Further the parents would also be entitled for compensation towards loss of estate.

12. In the case at hand, admittedly, death of child took place in the year 2014 and in between 1994 to 2014, value of rupee has drastically come down, which is to be taken into consideration while awarding amount of compensation. This apart, claimants/appellants herein are also entitled for compensation under the heads of loss of love and affection and filial consortium to parents.

13. Considering over all facts and circumstances of case and law laid down by Hon'ble Supreme Court in the matter of **Kishan Gopal** (supra) and **Lata Wadhwa** (supra), in the opinion of this Court, ends of justice would meet if a lump-sum amount of Rs.3,50,000/- is awarded as compensation to appellants/claimants along with interest @ 6% per annum from the date of filing of application till its realization.

14. On the basis of above discussion, appellants/claimants are held entitled for a total compensation of Rs.3,50,000/- (Rupees three lakh fifty thousand), instead of Rs.1,80,000/-. The above amount of compensation will carry interest @ 6% per annum from the date of filing of application till its realization. Rest of the conditions of impugned award shall remain intact.

Any amount deposited in pursuance to the award passed by learned Claims Tribunal may be adjusted in the total amount of compensation.

15. In the result, the appeal is allowed in part and award impugned stands modified to the extent indicated above.

16. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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