

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 111 of 2015**

1. Smt. Mamta Tharwani, W/o Gangu @ Laxman Tharwani, Aged About 36 Years.
2. Gangu @ Laxaman Tharwani S/o Gawala Tharwani Aged About 39 Years.

Both are R/o Chakarbhatha, Thana-Chakarbhata, Tahsil Bilha, Revenue/civil Distt. Bilaspur (C.G.)

**---- Appellants****Versus**

1. Santosh Kumar Kujur, S/o Late Jairam Kujur, Aged About 32 Years R/o Village- Hirri Mince, Thana - Hirri, Tahsil Bilha, Distt. Bilaspur C.G. ,
2. Sandip Kumar Kujur S/o Jairam Kujur R/o Village Hirri Mince, Thana- Hirri, Tahsil Bilha, Distt. Bilaspur (C.G.)
3. Branch Manager, Through IFFCO TOKIO General Insurance Company Limited, Regional Office- 3<sup>rd</sup> Floor, Lalganga Shopping Mall Complex, G.E. Road, Revenue/Civil District - Raipur (C.G.)

**---- Respondents**


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| For Appellants          | : | Shri Sameer Singh, Advocate.                                   |
| For Respondent No.1 & 2 | : | Shri Ravindra Agrawal, Advocate                                |
| For Respondent No.3     | : | Shri K. Rohan, Advocate on behalf of Shri Amrito Das, Advocate |

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**Order On Board By Hon. Shri Justice Parth Prateem Sahu****19/06/2019**

1. Appellants, parents of deceased Anjali Tharwani, aged about 6 years, have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') challenging award dated 3.7.2014 passed by learned 2<sup>nd</sup> Additional Member to the Court of learned 1<sup>st</sup> Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.5/2013 awarding total compensation of Rs.1,25,000/- with interest @ 7% p.a.

from the date of filing of application till realization.

2. Facts of the case, in brief, are that on 12.12.2012 deceased Anjali Tharwani along with her aunt & maternal grandmother was coming to Chakarbhata from Bilaspur in auto-rickshaw. When they reached near Kali Temple, Tifra, Bilaspur, one another auto-rickshaw bearing registration No.CG10-T-3919 dashed auto-rickshaw in which said Anjali was travelling as a result of which said Anjali sustained grievous injuries and succumbed to those injuries. Matter was reported to concerned police station based on which offence under Section 304A of IPC was registered against non-applicant No.1.
3. Claimants, who are parents of deceased, filed claim application before competent Claims Tribunal claiming an amount of Rs.5,10,000/- as compensation on account of death of deceased Anjali due to injuries sustained by her in a motor vehicular accident.
4. Non-applicant No.1 & 2, driver & owner of offending vehicle, submitted reply to claim application and denied all adverse pleadings made in claim application. They have pleaded that on the date of accident, offending vehicle was insured with non-applicant No.3-Insurance Company and therefore liability, if any, for payment of amount of compensation would be on it.
5. Non-applicant No.3 Insurance Company also submitted its reply to claim application denying all material facts and allegation levelled therein. It was further pleaded that offending vehicle was plied in breach of condition of

insurance policy as on the date of accident non-applicant No.1-driver was not possessing valid and effective driving license and therefore insurance company is not liable to satisfy the impugned award. It was further pleaded that amount of compensation claimed by claimants is highly exaggerated.

6. The Claims Tribunal on appreciation of pleadings and evidence brought on record by respective parties, has held that accident took place due to rash and negligent driving by the driver of offending vehicle in which deceased lost her life and accordingly awarded a total sum of Rs.1,25,000/- as compensation.
7. Relying on decision of Hon'ble Supreme Court in the matter of Kishan Gopal & anr v. Lala & ors reported in (2014) 1 SCC 244 wherein compensation of Rs.5,00,000/- has been awarded in case of death of a child, it is submitted by learned counsel for appellants that compensation awarded by Claims Tribunal in the case at hand is not just and reasonable, it is on lower side and hence it is required to be enhanced. He further submits that amount awarded by 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 the respondents supported the impugned award and submitted that amount awarded by Claims Tribunal is just and proper and needs no interference by this Court as the deceased was only 06 years old and was not an earning member.

9. I have heard learned counsel for the parties and perused the records.
10. The only point which requires consideration of this Court is whether the Claims Tribunal has awarded just and reasonable amount of compensation to claimants or not?
11. In the matter of Kishan Gopal (supra), the Hon'ble Supreme Court considering its earlier decision in the matter of Lata Wadhwa v. State of Bihar reported in (2001) 8 SCC 197 awarded an amount of Rs.5 Lakh as compensation by assessing income of deceased on notional basis as Rs.30,000/- p.a. on the ground that the rupee value has come down drastically from the year 1994. In the matter of Lata Wadhwa (supra) it was observed by Hon'ble Supreme Court that though in case of death of a child on account of injuries suffered in a motor vehicular 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 the death of child took place in the year 2012 and in between 1994 to 2012 the 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 & affection and loss of consortium of child.

13. Considering overall facts and circumstances of case and law laid down by Hon'ble Supreme Court in the matter of Kishan Gopal (supra) & Lata Wadhwa (supra), in the opinion of this Court, the ends of justice would be served if a lump sum amount Rs.3,50,000/- is awarded as compensation to claimants/appellants along with interest @ 7% p.a. from the date of filing of application till its realization.
14. On the basis of above discussion, the claimants/appellants are held entitled for a total compensation of Rs.3,50,000/-. Since the Claims Tribunal has already awarded Rs.1,25,000/-, after deducting the said amount, claimants/appellants are entitled for enhanced amount of Rs.2,25,000/- along with interest at the rate of 7% p.a. from the date of filing of application till its realization. Rest of the conditions of impugned award shall remain as it is.
15. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-  
(Parth Prateem Sahu)  
Judge

roshan/-