

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1434 of 2016

- The United India Insurance Co. Ltd. Through its Divisional Manager, Divisional Office, Brahma Road, near Kumkum Hotel, Ambikapur, Thana & Tahsil- Ambikapur, Zilla – Surguja, (C.G.)

---- Appellant/Insurer/Non-applicant No.2

Versus

1. Smt. Lalita Rani, W/o Late Neeraj Kumar Viswas, aged about 28 years
2. Smt. Renu Mandal, W/o Nikhil Mandal, aged about 51 years
3. Nikhil Mandal, S/o Vinod Mandal age about 53 years

All are resident of Patel Para, Fundurdihari, Near Old R.T.O. Ambikapur, Thana – Gandhi Nagar, Tahsil – Ambikapur, Zilla – Surguja (C.G.)

(Claimants)

4. Arun Kumar Singh, S/o Ram Lal Singh, Aged about 43 years, Occupation – Service (Shliksha Karmi Class-1), Resident of : Patel Para, Fundurdihari, near old R.T.O., Ambikapur, Thana – Gandhi Nagar, Tahsil- Ambikapur, Zilla- Surguja (C.G.)

(Owner/Non-applicant No.1)

---- Respondents

For Appellant/non-applicant No.2/ Insurance Company	:	Smt. Chitra Shrivastava, Advocate
For Respondents No. 1 to 3/ Claimants	:	Shri A.N. Pandey, Advocate
For Respondent No. 4 Non-applicant No. 1	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

12.03.2019

1. This appeal is by the Insurance Company/non-applicant No.2/Appellant under Section 173 of the Motor Vehicles Act, 1988 against the award dated 26.07.2016 passed by the Motor Accident Claims Tribunal, Ambikapur, District Surguja (C.G.) in Claim Case No. 01 of 2016 awarding total compensation of Rs.7,26,000/-/- with interest @ 7% per annum from the date of application till realization, fastening liability on the non-applicants No.2 along with non-applicant No. 1 jointly and severally.

2. The Claimants, unfortunate wife, mother and father of deceased Niraj Kumar

Viswas, claimed compensation of Rs.11,32,000/- by filing a claim petition under Section 163A of the Motor Vehicles Act for the death of deceased Niraj Kumar Viswas in the motor accident.

3. Facts of the case, in brief, are that on instruction of non-applicant No.1, deceased Niraj Kumar Viswas was returning from Bilaspur to Ambikapur along with non-applicant No.1 on 16.09.2015 by Hundai Car bearing registration No. CG-15/CW/3466 which was being driven by Niraj Kumar Viswas, owned by non-applicant No.1 and insured with non-applicant No.2/Appellant, when they reached between village Kendai and Morga of Bilaspur-Ambikapur maid road, they met with an accident as the said Car dashed against a tree. As a result thereof, Niraj Kumar Viswas sustained grievous injuries and died on spot. At the time of accident, deceased Niraj Kumar Viswas was aged about 33 years and was earning Rs.3,000/- per month by doing the work of driver and agriculture.

4. Learned counsel for the Appellant/Insurance Company challenges liability on the ground that the deceased, driver of the vehicle Hundai Car, had borrowed the vehicle from its owner, therefore, the claim petition filed by the Claimants under Section 163A of the Motor Vehicles Act is not tenable. She submits that the Tribunal ignoring the fact that the claim petition was filed by the Claimants under Section 163A of the Motor Vehicles Act, has awarded Rs.1,50,000/- towards conventional heads which is beyond jurisdiction, therefore, the same may be reduced suitably. She further submits that looking to the age of the deceased i.e. 33 years, the Tribunal has wrongly granted 50% towards future prospects to the Claimants whereas it should have been 40%. Reliance has been placed by learned counsel for the Appellants on the decision of Hon'ble Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

5. On the other hand, learned counsel for Respondents 1 to 3/Claimants supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation, which needs no interference by this Court.

6. Heard learned counsel for the parties and perused the material available on record.
7. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.
8. It is not disputed by learned counsel for the parties that the Claimants who are wife and parents of deceased Niraj Kumar Viswas filed claim petition under Section 163A of the Motor Vehicles Act, and as such, the Second Schedule as prescribed under the Act is applicable in this case. The present case is related to driving of the vehicle Hundai Car bearing registration No. CG-15/CW/3466 by the deceased. On the date of accident i.e. 16.09.2015, the deceased was driving the said Car on the instruction of non-applicant No. 1 and it got dashed against a tree due to which the deceased sustained grievous injuries and died on spot.
9. As per (Ex.-P/11), the vehicle Hundai Car was duly insured with non-applicant No.1 at the time of accident which is not disputed by the parties. Ex.-P/11, insurance cover note, is proved but no other particulars are given by the Insurance Company regarding details of premium, PA coverage of owner and driver etc. and policy is private car **package policy**, therefore, the Insurance Company is liable to pay compensation.
10. Considering the facts and circumstances of the case, particularly considering the age of the deceased i.e. 33 years, the dependency, the nature of job, the deceased was self employed, the Second Schedule under Section 163A of the Motor Vehicles Act, 1988 and the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121*** and *Pranay Sethi* (supra), the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.3,000/- per month	Rs.36,000/- per annum (as assessed by the Tribunal)
2.	40% towards future prospects added to annual	(Rs.36,000/- + Rs.14,400/-)

	income	Rs.50,400/-
3.	1/3rd deduction towards personal and living expenses of the deceased	(Rs.50,400/- – Rs.16,800/-) Rs.33,600/-
4.	Multiplier of 16 applied	Rs.33,600/- x 16= Rs.5,37,600/-
5.	<u>Conventional Heads:</u> Loss of consortium, ; loss of estate & funeral expenses	Rs.70,000/-
	Total Compensation	Rs.6,07,600/-

Thus, the Claimants are awarded Rs.6,07,600/- instead of Rs.7,26,000/- as awarded by the Tribunal.

11. For the foregoing reasons, the appeal is allowed in part. The amount of compensation of Rs.7,26,000/- awarded by the Tribunal is reduced to Rs.6,07,600/-. The amount of compensation of Rs.6,07,600/- shall carry interest @ 7% per annum from the date of application till its realization as awarded by the Tribunal. The award is modified to the above extent. Rest of the conditions of the award shall remain intact.

12. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge