

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 178 of 2017**

1. Mamta Devi Aditya, W/o Late Grahan Kumar Aditya, Aged About 31 Years, R/o Village- Kikirda, Police Station- Birra, Tahsil- Jaijaipur, District- Janjgir-Champa, Chhattisgarh, At Present R/o Azad Nagar, Balco Nagar, Tahsil And District Korba, Chhattisgarh,
2. Versha Kumari Aditya, D/o Late Grahan Kumar Aditya, Aged About 12 Years, Minor Represented Through Mother And Legal Guardian Mamta Devi Aditya W/o Grahan Kumar Aditya, R/o Village- Kikirda, Police Station- Birra, Tahsil- Jaijaipur, District- Janjgir-Champa, Chhattisgarh, At Present R/o Azad Nagar, Balco Nagar, Tahsil And District Korba, Chhattisgarh,
3. Badal Kumar Aditya, S/o Late Grahan Kumar Aditya, Aged About 10 Years Minor Represented Through Mother And Legal Guardian Mamta Devi Aditya W/o Grahan Kumar Aditya, R/o Village- Kikirda, Police Station- Birra, Tahsil- Jaijaipur, District- Janjgir-Champa, Chhattisgarh, At Present R/o Azad Nagar, Balco Nagar, Tahsil And District Korba, Chhattisgarh,
4. Megha Kumari, D/o Grahan Kumar Aditya, Aged About 8 Years Minor Represented Through Mother And Legal Guardian Mamta Devi Aditya W/o Grahan Kumar Aditya, R/o Village- Kikirda, Police Station- Birra, Tahsil- Jaijaipur, District- Janjgir-Champa, Chhattisgarh, At Present R/o Azad Nagar, Balco Nagar, Tahsil And District Korba, Chhattisgarh,
5. Goutam Prasad Kahra, S/o Late Kaushal Prasad Kahra, Aged About 66 Years R/o Village- Kikirda, Police Station- Birra, Tahsil- Jaijaipur, District- Janjgir-Champa, Chhattisgarh, At Present R/o Azad Nagar, Balco Nagar, Tahsil And District Korba, Chhattisgarh,
6. Ahilya Bai, W/o Goutam Prasad Kahra, Aged About 60 Years R/o Village- Kikirda, Police Station- Birra, Tahsil- Jaijaipur, District- Janjgir-Champa, Chhattisgarh, At Present R/o Azad Nagar, Balco Nagar, Tahsil And District Korba, Chhattisgarh
.....Claimants,

---- Appellants**Versus**

1. Mahettar Lal Manhar, S/o Ramhay Lal Manhar, R/o Village- Kataud, Tahsil And Police Station- Nawagarh, District Janjgir-Champa, ChhattisgarhDriver,
2. Sheikh Nabi, S/o Yar Mohammad, R/o House No. 155, Bus Stand Mohalla, Village- Khartal, Tahsil And Police Station- Nawagarh, District Janjgir-Champa, ChhattisgarhOwner,
3. Magma General Insurance Company Limited, Through Branch

Manager, Magma General Insurance Company Limited, Address-
Magma House 24 Park Street, Kolkata West Bengal
.....Insurer,

---- Respondents

For Appellants	:	Shri Shashi Kumar Kushwaha appears on behalf of Smt. Preeti Yadav, Advocate
For Respondents No. 1 & 2:		Shri Praveen K. Dhurandhar along with Shri Vivek Singhal, Advocate.
For Respondent No.3	:	Shri Rohitashwa Singh, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

Order / Award on Board

19.02.2020

1. This Miscellaneous Appeal has been preferred the Claimants under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988) questioning the legality and propriety of the Award dated 21.10.2016 passed by the Motor Accident Claims Tribunal, Korba (for short, the Claims Tribunal) in Claim Case No.11/2015 whereby the learned Claims Tribunal, while allowing the claim in part, has awarded total amount of compensation to the tune of Rs.9,50,064/- with 8% interest per annum from the date of filing of Claim Petitions till its realisation, while fastening liability upon the insurance company. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that on 05.12.2014 at 9.30 pm, deceased Grahana Kumar Aditya was returning from Bhatgaon to Kikirda along with his brother while sitting as pillion rider on his motorcycle, at the relevant time, he was hit vehemently by the offending vehicle "Truck" bearing its registration No. C.G.-11/AB/3125, owned by Non-Applicant No.2 – Sheikh Nabi and insured by Non-Applicant No.3 –

Magma General Insurance Company Limited. At the time of occurrence, the vehicle in question was being driven rashly and negligently by its driver Mahettar Lal Manhar, Non-Applicant No.1, as a result of which, deceased sustained serious injuries and expired on the spot.

3. On account of the aforesaid accident, the Claimants being legal representatives of deceased, Grahan Kumar Aditya, instituted a claim petition enumerated under Section 166 of the Act of 1988, claiming total amount of compensation to the tune of Rs.55,60,000/- under various heads by submitting inter alia that the deceased was a tailor by profession and was also engaged in the trade of vegetables and used to earn Rs.10,000/- per month.

4. Non-Applicants No.1 & 2, driver and owner of the offending vehicle, were proceeded *ex parte*, while Non-Applicant No.2 - insurer has contested the aforesaid claim mainly on the ground that the driver was not possessing the effective and valid driving license and the vehicle in question was being plied without any permit, therefore, no liability as such could be fastened upon it.

5. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 05.12.2014 at 9.30 pm due to rash and negligent driving of the offending vehicle by its driver, resulting into the sad demise of Grahan Kumar Aditya, who was 33 years old at the relevant time. It held further that the vehicle in question was not being used in violation of the insurance policy and by considering the monthly income of the deceased to the tune of Rs.5,699/-, yearly Rs.68,388/-, awarded total amount of compensation to the tune of Rs.9,50,064/- with 8% interest per annum from the date of

filing of Claim Petition till its realisation, while fastening liability upon the insurance company.

6. Being aggrieved, the Claimants have preferred the present appeal. Learned counsel appearing for the appellants, submits that the award impugned as passed by the Claims Tribunal is apparently on the lower side. According to him, the Claims Tribunal has erred in not considering the future prospects of the income of the deceased and has also fallen in error in deducting 1/3rd instead of 1/4th towards personal and living expenses, as held in ***Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and another***, reported in (2009) 6 SCC 121. On these premises, he prays that the amount of compensation deserves to be enhanced.

7. On the other hand, Shri Praveen K. Dhurandhar and Shri Rohitashwa Singh, learned counsel appearing for the respondents, have supported the award impugned.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. From perusal of the record, it appears that the Claims Tribunal, in absence of any documentary evidence showing the monthly income of the deceased as Rs.10,000/-, has not committed any illegality in considering the monthly income of the deceased to the tune of Rs.5,699/-, yearly Rs.68,388/-. However, while assessing the amount of compensation, the Claims Tribunal has certainly committed an illegality in deducting 1/3rd instead of 1/4th as the total number of dependents upon the deceased were 5 in number and, also applying the multiplier of 17

instead of 16, as held in **Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and another** (supra) as the deceased was found to be 33 years old at the relevant point of time. It appears further that while awarding the amount of compensation, the Tribunal ought to have considered the future prospects of the income of the deceased, in view of the principles laid down in the matter of ***National Insurance Company Limited -v- Pranay Sethi*** reported in (2017) 16 SCC 680.

10. Considering the aforesaid facts and circumstances of the case and that by considering the monthly income of the deceased as Rs.5,699/-, yearly Rs.68,388/-, as held by the Tribunal and that by adding 40% of it, i.e., Rs.27,356/- towards future prospects of the income for determining the actual income of the deceased, it would thus be worked out to the tune of Rs.95,744/- (Rs.68,388/- + Rs.27,356/-). Since number of dependents upon the deceased were 5, proper deduction would, therefore, be 1/4th instead of 1/3rd and thus by deducting 1/4th of it, i.e., Rs.23,936/-, the yearly dependency would come to Rs.71,808/- and that by applying the multiplier of 16, as the deceased was found to be 33 years old at the relevant time, the total dependency would be worked out at Rs.11,48,928/-. In addition to this, the Claimants would be entitled to a sum of Rs.1,75,000/- towards conventional heads, as awarded by the Claims Tribunal.

11. The Claimants would, thus, be entitled to a total amount of compensation to the tune of Rs.13,23,928/-, instead of Rs.9,50,064/- as awarded by the Tribunal, with 8% interest per annum from the date of filing of Claim Petition till its realisation. Out of the said amount, 50% of it shall be disbursed to the Claimants as the deceased was the only bread

earner in the family and remaining 50% of the said amount of compensation shall be deposited in a Nationalised Bank, as per the direction of the Executing Court.

12. In the light of above observation, the appeal is accordingly allowed in part to the extent indicated herein above. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge