

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 528 of 2014**

1. Kuldeep Yadav, aged about 28 years, son of Late Vijay Yadav.
 2. Purnima Yadav, aged about 26 years, wife of Kuldeep Yadav.
 3. Krishna Yadav, aged about 6 years, son of Kuldeep Yadav.
 4. Kunal Yadav, aged about 3 & 1/2 years, son of Kuldeep Yadav.
- Appellant No.3 & 4 are minor through natural guardian mother appellant no.2 Purnima Yadav, wife of Kuldeep Yadav, All resident of Lalkhadan, Bilaspur, PS Torwa, Tahsil and Civil and Revenue District Bilaspur (CG)

---- Appellants**Versus**

1. Dinesh, S/o Shivprasad Satnami, aged about 28 years, R/o Mohtara (Saaja), P.S. Saaja, Civil and Revenue District Durg (CG) [Driver of offending vehicle truck no.CG04-DA-6606]
2. Ajmer Singh Bal, S/o Bisahan Singh Bal, aged about 58 years, R/o House No.MIG-1182, Veer Savarkar Nagar, Heerapur, Raipur C.G., Aarakshi Kendra Amanaka, Raipur, Civil and Revenue District : Raipur (CG) [Owner of offending vehicle truck no.CG04-DA-6606]
3. Shriram General Insurance Company, Through Branch Manager, E/8 E.P.I.P.R.I.I.C.O. Industrial Area, Seetapur, Jaipur, Civil and Revenue District : Jaipur, Rajasthan. [Insurer of offending vehicle truck no.CG04-DA-6606]

---- Respondents

For Appellants	:	Mr. Atul Pandey, Advocate
For Respondent No.1& 2	:	None
For Respondent No.3	:	Mr. Dipak Gupta, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****Order On Board****Per Parth Prateem Sahu, J****14/09/2020**

1. Claimants/appellants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement in the compensation awarded by the learned 3rd Additional Member to the Court of the learned 1st Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') vide award dated 10.2.2014 passed in Claim Case No.16/2012 by which the Claims Tribunal partly

allowed application of claimants and awarded a total amount of Rs.1,53,000/- as compensation in a death case.

2. Facts of the case, in brief, are that on 2.11.2011 at about 7.30 a.m. Parmeshwar Yadav was going by his motorcycle with his children namely Ritik alias Krishna, Kshitiz alias Kishan & Isha Kumar alias Kritika, to drop them at their school Gayatri Vidhya Mandir. When he reached in front of S.K. Motor Garage, Lal Khadaan Road, Sant Nagar, Bilaspur at that time, seeing one truck bearing registration number CG04-DA-6606, coming from the side of Bilaspur, driven in a rash and negligent manner by its driver, said Parmeshwar Yadav stopped his motorcycle by side of road. However, the driver of said truck came on its wrong side, dashed motorcycle of Parmeshwar and then ran over them, as a result, Parmeshwar, Ritik alias Krishna & Isha alias Kritia died on spot, whereas Kshitiz alias Kishan suffered grievous injuries. Report of the accident was lodged in Police Station Torwa, Bilaspur based on which crime under Sections 279, 337, 304A of IPC was registered against non-applicant No.1 and on completion of investigation, charge sheet was filed against him before the competent jurisdictional Magistrate.
3. Claimants, who are mother, brother & sister of deceased, have filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking compensation of Rs.3,75,000/- under various heads.
4. Non-applicant Nos.1 & 2 did not appear before the Claims Tribunal even after service of notice by way of substituted

mode of service i.e. paper publication, therefore, they were proceeded ex-parte by the Claims Tribunal.

5. Non-applicant No.3 Insurance Company submitted its reply to claimants' application denying the pleadings made therein. It was pleaded that accident occurred due to rash & negligent driving of motor cycle by the deceased himself and not due to rash & negligent driving of offending vehicle by its driver. It was also pleaded that amount of compensation claimed is highly exaggerated. There was no valid and effective driving license with non-applicant No.1 causing breach of conditions of insurance policy.
6. Upon appreciation of pleadings and evidence placed on record by the parties, the Claims Tribunal vide impugned award reached to the conclusion that non-applicant No.1 by driving the offending vehicle in a rash and negligent manner, causing the accident by dashing motorcycle of deceased which has resulted into death of Parmeshwar Yadav, Ritik alias Krishna & Isha alias Kritia. Deceased Parmeshwar and other pillion riders were also contributory negligent to the extent of 10% for the accident. The offending vehicle was not plying in breach of any of the conditions of insurance policy. Claim application of claimants suffers from vice of misjoinder of necessary parties. Consequently, the Claims Tribunal allowed the claim application in part, awarded total sum of Rs.1,53,000/-, along with interest @ 6% p.a., after deducting 10% towards contributory negligence of deceased Parmeshwar Yadav, driver

of motorcycle.

7. Mr. Pandey, learned counsel representing claimants/ appellants submits that the Claims Tribunal erred in awarding meagre amount of compensation of Rs.1,53,000/- holding that there was contributory negligence on the part of deceased driver of motorcycle to the extent of 10%. He submits that the deceased was only a pillion rider in the motorcycle and she cannot be held responsible for the rash and negligent driving by driver of motorcycle. He also submits that it is case of death of minor child aged about 07 years, the compensation awarded by the Claims Tribunal is not just and reasonable, it is on lower side and hence it is required to be enhanced.
8. Mr. Dipak Gupta, learned counsel appearing on behalf of respondent No.3-Insurance Company has supported the impugned award and submitted that accident was outcome of head-on collusion between motorcycle of deceased and offending vehicle, hence, the Claims Tribunal was justified in holding the deceased driver to be contributory negligent to the extent of 10%. The compensation awarded by the Claims Tribunal is just and proper and the same is not required to be enhanced at all.
9. We have heard learned counsel for both sides and perused the record of the Claims Tribunal.
10. Insofar as contributory negligence is concerned, this Court has elaborately dealt with this issue in MAC No.526/2014, arising out of the same accident and filed by the same claimants/

appellants against death of Parmeshwar, driver of motorcycle, and set aside finding of the Claims Tribunal holding the deceased driver of motorcycle to be contributory negligent to the extent of 10%. Accordingly, in case at hand also, finding of the Claims Tribunal fixing contributory negligence on the pillion rider stands set aside.

11. As regards the quantum of compensation, the Hon'ble Supreme Court in the case of **Puttamma v. K.L. Narayana Reddy** reported in **(2013) 15 SCC 45** has held that for the accidental death of children in the age group of 5 years, fixed compensation of Rs.1,00,000/- is to be awarded to the claimants and for the accidental death of children more than 5 years of age, fixed compensation of Rs.1,50,000/- is to be awarded. Relevant paragraph of Puttamma's case (supra) is extracted below:-

“58.The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/-(rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs.1,50,000/ (rupees one lakh and fifty thousand) or the amount

may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163A of the Act, 1988.”

12. In the case at hand, admittedly on the date of accident the deceased was more than the age of 05 years, therefore, in the light of decision of Hon'ble Supreme Court in the case of Puttamma's case (supra), lump sum compensation to be awarded as Rs.1,50,000/-. The Claims Tribunal has already awarded Rs.1,53,000/- to the appellants which cannot be said to be on lower side. We do not find any tenable ground to interfere with the appeal, which is liable to be dismissed and is hereby dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-