

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 677 of 2015**

1. Shildhar Sai Paikara S/o Kalpnath Sai, Aged About 34 Years
 2. Smt. Chandrakiran Paikara W/o Shildhar Sai Paikara, Aged About 28 Years
- Both R/o Village Kurdeg, Tahsil Bagicha, District- Bagicha, Civil And Revenue District- Jashpur, Chhattisgarh.

---- Appellants**Versus**

1. Bindra Prasad Gupta S/o Late Shivilal Sao R/o Gandhi Nagar, Ambikapur, District- Surguja, Chhattisgarh. **(Owner)**
2. Anil Kumar Nagesiya S/o Bhulan Ram Nagesiya, Aged About 27 Years, Occupation Driver, R/o Village Kota, Tahsil - Lundra, District - Surguja, C.G.
At Present R/o Gandhi Nagar, Ambikapur, District- Surguja, Chhattisgarh. **(Driver)**
3. The Oriental Insurance Company Limited, Local Branch Office Raigarh, Tahsil and District- Raigarh, Chhattisgarh.

(Insurer)**---- Respondents**

For Appellants	: Shri A. K. Prasad, Advocate
For Respondents No.1 & 2	: None
For Respondent No.3	: Shri R.N. Pusty, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****28/10/2020**

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the impugned award dated 19/03/2015

passed by the Additional Motor Accident Claims Tribunal (F.T.C.) Jashpur, District Jashpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.19 of 2013 whereby learned Claims Tribunal allowed application filed under Section 166 of the M.V. Act in part and awarded Rs.2,98,000/- as compensation in a fatal accident case.

2. Facts relevant for disposal of this appeal, are that, on 07/05/2012 appellant No.1 was walking on road along with her daughter Ku. Preetvi. When they reached near house of Harinath Saya, one Mahindra Max Pickup vehicle No.CG/15/A/3760 (hereinafter referred to as 'offending vehicle') coming from village Bamba driven by non-applicant No.2 rashly and negligently, dashed Ku. Preetvi and caused accident. In the said accident, she suffered grievous injuries over her head, right ear and both of her legs. She became unconscious, she was taken to Hospital at Bagicha, where she died.
3. Appellants/claimants who are parents of the deceased Ku. Preetvi filed an application under Section 166 of the M.V. Act before learned Claims Tribunal seeking compensation of Rs.12,25,000/- on different heads on account of untimely death of their daughter, aged about 5 years.
4. Non-applicant No.1 submitted reply to claim application, while denying the pleadings made therein, further pleaded that the amount of compensation claimed is highly exaggerated; on the

date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company, as such the liability, if any, to satisfy the amount of compensation would be upon Insurance Company.

5. Non-applicant No.2/driver of the offending vehicle did not appear before learned Claims Tribunal and was proceeded *ex parte*.
6. Non-applicant No.3/Insurance Company submitted reply to claim application, denying the facts pleaded therein and pleaded that on the date of accident, offending vehicle was being plied in breach of the policy condition, driver of the offending vehicle was not possessed with valid and effective driving licence.
7. Learned Claims Tribunal upon appreciation of pleadings, evidence and material placed on record by the respective parties, held that non-applicant No.2 while driving the offending vehicle rashly and negligently caused accident; Ku. Preetvi died on account of motor accidental injuries; there was no breach of policy conditions and awarded Rs.2,98,000/- as total compensation.
8. Shri A.K. Prasad, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in awarding meager amount of compensation of Rs.2,98,000/- only. The learned Claims Tribunal has not awarded compensation by applying the correct multiplier and deductions. Further erred in not

awarding any amount towards future prospects overlooking the age of deceased to be 5 years only. He further submits that no amount has been awarded towards loss of love and affection, funeral expenses, hence, prayed that amount of compensation may be suitably enhanced. In support of his contention, he relied upon the judgment passed by Hon'ble Supreme Court in case of **Rajendra Singh and Others v. National Insurance Company Limited and Others**¹.

9. Per contra, Shri R.N. Pusty, learned counsel for respondent No.3/Insurance Company submits that amount of compensation awarded to the appellants is on higher side. He further submits that learned Claims Tribunal has erroneously assessed the monthly income of deceased as Rs.3,000/- per month overlooking the age of deceased as only 5 years who was not an earning member. It is contended that amount of compensation in cases of minor children of less than 10 years, lump-sum amount of compensation is to be awarded. In support of his contention, he places his reliance on the judgment passed by Hon'ble Supreme Court in case of **Puttamma and others v. K.L. Narayana Reddy and Another**².
10. I have heard learned counsel for the respective parties and perused the record carefully.

¹ 2020 SCC OnLine SC 521

² (2013) 15 SCC 45

11. There is no dispute with regard to age of the deceased as 5 years on the date of accident. Learned Claims Tribunal has assessed the income of deceased child as Rs.3,000/- per month and Rs.36,000/- per annum and after deducting 1/2 (50%) towards personal and living expenses, assessed the loss of dependency to Rs.18,000/- per month, by applying the multiplier of 16, awarded Rs.2,88,000/- towards loss of dependency + Rs.10,000/- (5,000/- each) towards funeral expenses and loss of love and affection making total compensation of Rs.2,98,000/-. The child aged about 5 years cannot have her own earning, but they are dependent fully upon their parents. In cases of death of a child of 5 years, parent cannot be awarded the amount of compensation towards loss of dependency, but they can be compensated only towards loss of the family member. The loss of human life in a very tender age can never be measured in terms of money.
12. Award of compensation in case of death of minor child has been considered by Hon'ble Supreme Court in case of **Lata Wadhwa and Others v. State of Bihar and Others**³ wherein Hon'ble Supreme Court has categorized the age group of the children for the purpose of calculating the amount of compensation and held thus :

“11.....Loss of a child to the parents is irrecoupable, and no amount of money could

³ (2001) 8 SCC 197

compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well-placed officials of the Tata Iron and Steel Company, and on considering the submission of Mr. Nariman, we would direct that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs, to which the conventional figure of Rs.50,000/- should be added and thus the total amount in each case would be Rs. 2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. TISCO itself has a tradition that every employee can get one of his child employed in the company.....”

13. In case of **Puttamma** (supra), Hon'ble Supreme Court while considering the different letters written by Ministry and the amendment bill under the M.V. Act, has held thus :

“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 directions to the Central Government through the Secretary, Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by 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 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs.1,00,000/- (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs.1,50,000 (Rupees one lakh and fifty thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act.”

14. From the aforementioned rulings of Hon'ble Supreme Court, it is apt clear that Hon'ble Supreme Court while considering the entire facts and circumstances of the case has held that till amendment is made under Section 163-A of the M.V. Act, for the children up to the age of 5 years claimants shall be entitled for a fixed compensation of Rs.1,00,000/- (Rupees one lakh) and for the age group of 5 to 10 years to be Rs.1,50,000 (Rupees one lakh and fifty thousand). In the case at hand, on the date of accident, age of deceased was 5 years, but learned Claims Tribunal has already awarded Rs.2,98,000/- as total compensation, which cannot be said to be on lower side.
15. Case law **Rajendra Singh** (supra) relied upon by learned counsel for the appellants is on different facts. There the age of the deceased child was 12 years.

16. For the foregoing reasons, I do not find any tenable ground in this appeal. The appeal being devoid of substance, is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh