

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 1080 of 2014

1. Surendra Singh S/o Dilip Singh Chawla Aged About 35 Years.
 2. Smt. Kuldeep Kaur W/o Surendra Singh Chawla Aged About 30 Years.
- Both are R/o -FCI Road, Mahasamund, P.S. Mahasamund, Distt. Mahasamund C.G.

---- Appellants/claimants

Versus

1. Ramlal @ Munna S/o Keshav Sahu Aged About 40 Years R/o Bus Stand, Tumgaon, P.S. Tumgaon, Civil & Revenue Distt. Mahasamund C.G.
2. Balram Chandraker S/o Narayan Lal Chandraker R/o Raipur Road, Near Old Naka Mahasamund, P.S. Mahasamund, Civil & Revenue Distt. Mahasamund C.G.
3. Branch Manager The Oriental Insurance Company Limited, Madina Building, Jail Road, Raipur, Civil & Revenue Distt. Raipur C.G.

--- Respondents

For Appellants : Mr. Sunil Sahu, Advocate.

For Respondent No.1 & 2 : None.

For Respondent No.3 : Mr. T.K. Tiwari, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J

05/10/2020

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of amount of compensation awarded by learned Motor Accident Claims Tribunal, Mahasamund, (for short, 'the Tribunal') vide award dated 30.08.2014 passed in Claim Case No.72/2010, whereby the Tribunal allowed application in part and awarded compensation of Rs.3,10,00/- in a fatal accident case.

2. Facts relevant for disposal of this appeal are that on 11.07.2019, when Ayushi was playing in front of her house, one truck bearing registration No.CG06-ZC-0153, (for short, 'offending vehicle'), driven by Non-applicant No.1 rashly and negligently, dashed minor Ayushi, as a result of which, she

suffered grievous injuries. She was brought to M.M.I Hospital, Raipur where she was declared brought dead. Accident was reported to PS -Mahasamund, based upon which crime was registered against non-applicant No.1.

3. On account of unfortunate and untimely death of their 7 years old daughter, appellants/claimants, who are parents of deceased, filed an application under Section 166 of the Act of 1988 seeking compensation of **Rs.4,00,000/-** on the ground that on the date of accident, deceased -Ayushi was aged about 7 years only and studying in PP-1 at Carmel Public School.

4., Non-applicant Nos.1 & 2, driver & owner of offending, vehicle submitted reply to application and denied the pleadings made therein against them. They have also denied the fact of accident from offending vehicle.

5. Non-applicant no.3/Insurance Company submitted its reply to application and denied the pleadings made therein. It was further pleaded that there was breach of condition of insurance policy as on the date of accident, non-applicant No.1/driver was not possessed of valid and effective driving license. There was no valid permit or fitness certificate with offending vehicle.

6. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that non-applicant No.1 -driver of offending vehicle was driving his vehicle in rash and negligent manner and dashed the deceased, due to which, she suffered grievous injuries and died; Insurance Company failed to prove breach of any condition of Insurance Policy. The Tribunal allowed claim application in part, awarded total compensation of Rs.3,10,000/- along with interest @ 6% p.a and fastened liability to satisfy the amount of compensation upon non-applicants, jointly and severally.

7. Learned counsel for the appellant/claimant submits that the Tribunal erred in awarding very meager amount of compensation, ignoring the fact that on the

date of accident, deceased was 7 years old child. He further submits that in case of death of child, Hon'ble Supreme Court in case of **Kishan Gopal & Anr v. Lala & Ors**¹ has awarded Rs.5,00,000/-.

8. Learned counsel for respondent No.3/Insurance Company submits that looking to the age of deceased ie only 7 years, amount of compensation awarded by the Tribunal is on higher side. He further submits that in the given facts of the case compensation awarded by the Tribunal cannot be said to be on lower side.

9. We have heard the learned counsel for the parties and perused the record of claim case.

10. Amount of compensation awarded by the Tribunal is not put to challenge by non-applicants. Challenging the quantum of award this appeal is filed by the claimants, for enhancement of award relying upon judgment passed by the Hon'ble Supreme Court in case of **Kishan Gopal & Anr** (supra).

11. Fact of the case of **Kishan Gopal & Anr** (supra) on which appellant has placed his reliance are different from the facts of the present case, therefore, the same is not applicable to the facts of the case at hand. In the said case, age of deceased was 10 years on the date of accident, whereas in the present case age of deceased was 7 years. The Hon'ble Supreme Court while considering the quantum of compensation has considered the fact that deceased was helping his father in his agricultural occupation which was undisputed fact. In case at hand, case of appellants is that deceased was aged about 7 years and studying in PP-1 at Carmel Public School. Therefore, case law relied upon by the learned counsel for the appellants of **Kishan Gopal & Anr** (supra) will not be applicable to the fact of the case.

¹ (2014) 1 SCC 244

12. Issue with regard to award of compensation in case of death of a child has been considered by Hon'ble Supreme Court in the matter of **Puttamma & Ors**

v. K. L. Narayana Reddy & Anr² and it was observed as under :-

“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 163-A of the 1988 Act..

13. Further Hon'ble Supreme Court in case of **Kishan Gopal & Anr** (supra) has considered the case of **Lata Wadhwa vs State of Bihar**³ and relied upon the principles laid down therein. Relevant paragraph & portions are extracted below :-

“36. Further, in Lata Wadhwa case it was observed that insofar as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs.24,000/- p.a.

38. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact.”

² (2013) 15 SCC 45

³ (2001) 8 SCC 197

14. In case of **Kishan Gopal & Anr** (supra), the Hon'ble Supreme Court has considered the age of deceased and his assistance to his father. From the clear facts and reasoning assigned therein, it is clear that case law of **Kishan Gopal & Anr** (supra) is entirely on different facts.

15. In case at hand, case of **Lata Wadhwa** (supra) & **Puttamma & Ors** (supra) will apply.

16. Taking into consideration the above ruling rendered by the Hon'ble Supreme Court in case of **Lata Wadhwa** (supra) & **Puttamma & Ors** (supra), we are of the considered view that the amount of compensation awarded by the Tribunal cannot be said to be on lower side calling interference.

17. For the foregoing reasons, we do not find any merit in this appeal. Appeal being devoid of substance is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramamchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-