NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 258 of 2013

1. Smt. Kamla Chouhan, w/o Late Chandraram, aged about 36 years R/o Bahma, Post- Nakbar, Tahsil Bagicha, P.S. Bagicha, Distt. Jashpur C.G.
2. Pushpraj Chouhan S/o Late Chandraram Chouhan, aged about 16 years Minor, Thru- Mother Kamla Chouhan, R/o Bahma, Post- Nakbar, Tah. Bagicha, P.S. Bagicha, Distt. Jashpur C.G.

---- Appellants

Versus

1. Biran Yadav S/o Paras Yadav, aged about 36 years R/o Kukurbhuka, P.S. Kate, Distt. Gopalganj Bihar, Bihar
2. M/s Kapiers India Pvt. Ltd. Rathi House, G.S. Road, Dishpur, Guwahati-5, P.S. Guwahati Asam, Assam
3. The Oriental Insurance Company Ltd, C.D.O. 11, G.S. Road, Christian Basti Guwahati-5 Asam, Nearest Office The Oriental Insurance Company Limited, Bilaspur, District:Bilaspur (CG)
4. A. Krishna Ram, S/o Late Lal Dev Ram, aged about 42 years, R/o Bahma, Post- Nakbar, Tahsil Bagicha, P.S. Bagicha, District: Jashpur (CG)

   B. Dusad Ram, S/o Late Lal Dev Ram, aged about 38 yrs, R/o Qtr. No.1, Room No.2, JFS Dr. Quarters, Nearby Shankarmath Harishchandra Road, P.S. Maisur, Distt. Maisur (Andhra Pradesh)

   Brother of deceased namely Chandraram Chouhan.

6. Smt. Raimuni, W/o Late Lal Dev Ram, aged about 55 years R/o Bahma, Post- Nakbar, Tahsil Bagicha, P.S. Bagicha, District : Jashpur, Chhattisgarh. (Mother of deceased Chandraram Chouhan)

---- Respondents

MAC No. 279 of 2013

- The Oriental Insurance Company Limited, C.D.O. 11 GS Road Krischan Basti, Guwahati-5, Aasam, Thru- Branch Manager, The Oriental Insurance Company Ltd., Raigarh, District Raigarh (CG)

---- Appellant

Versus

1. Krishna Ram, S/o Late Lal Dev Ram, aged about 42 years, R/o Bahma, Post- Nakbar, Tah. Bagicha, Distt. Jashpur C.G.
2. Dushad Ram S/o Late Laldev Ram, aged about 38 Years R/o Qtr.No.1, Room No. 2, J.F. S. Dr. Qurter Near Shankar Math, Harish Chandra Road, Maisur, Distt. Maisur (AP)
3. Smt. Raimuni W/o Late Laldev Ram aged about 55 years R/o Bahma, Post- Nakbar, Tah. Bagicha, District : Jashpur (CG)
4. Beeran Yadav S/o Paras Yadav aged about 36 years R/o Kukurbhuka, P.S. Kate, District : Gopalganj, Bihar.
5. M/s Kaipiyers India Pvt. Ltd., Rarhi House G.S. Road, Dishpur, Gohati-5, Asaam.
6. Smt. Kamla Chouhan W/o Late Chandra Ram, aged about 36 years R/o Kaliba, Tah. Kunkuri, Distt. Jashpur C.G., Presently R/o Deendayal Upadhyay Nagar, Raipur, Dist. Raipur (CG)
7. Pushpraj Chouhan S/o Late Chandra Ram Chouhan, aged about 16 years Minor, Thru- Mother, R/o Kaliba, Tah. Kunkuri, Distt. Jashpur C.G., Presently R/o Deendayal Upadhyay Nagar, Raipur, District : Raipur, Chhattisgarh

---- Respondents

MAC No.258/2013

For Appellants	:	Mr.GVK Rao, Advocate on behalf of Mr. Manoj Chouhan, Advocate
For Respondent No. 3	:	Mr.Vaibhav Maheshwari, Advocate on behalf of Mr. A. Sinha, Advocate
For Respondent No.4 & 6	:	Mr. Rishi Rahul Soni, Advocate.

MAC No.279/2013

For Appellant	:	Mr. Vaibhav Maheshwari, Advocate on behalf of Mr. A. Sinha, Advocate
For Respondent No.1 & 3	:	Mr. Rishi Rahul Soni, Advocate.
For Respondent No.6 & 7	:	Mr. GVK Rao, Advocate on behalf of Mr. Manoj Chouhan, Advocate

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Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

Per Parth Prateem Sahu, J

12/06/2020

1. Since both the above appeals arise out of the same accident and common award dated 10.12.2012 passed by the Motor Accident Claims Tribunal, Jashpur, they are being decided by this common order.

2. MAC No.258/2013 has been preferred by the claimants seeking enhancement in the compensation awarded by the Claims Tribunal in Claim Case No.23/2011, whereas MAC No.279/2013 has been preferred by insurance company challenging quantum of compensation awarded to claimants in Claim Case No.77/2010.

3. Facts of the case giving rise to these appeals may be summarized thus. On 22.5.2009 Chandra Ram Chouhan along with his wife Smt. Kamlta Bai, son Pushpraj & daughter Neha was going to Raipur from village Bahma in Indica Car bearing registration No.CG17-C-0973. The car was driven by Chandra Ram Chouhan. When the car reached near village Reda on Sarangarh-Chandarpur road, a truck bearing registration No. AS01-T-4771, driven by non-applicant No.1 in a rash and negligent manner, dashed against the car resulting in instantaneous death of Neha, whereas Chandra Ram Chouhan died on the way to hospital. Two separate claim applications

were filed before the Claims Tribunal at Jashpur, one by widow & son of deceased Chandra Ram Chouhan bearing Claim Case No.23/11 claiming an amount of Rs.1,37,69,728/- as compensation, and another by parents of Chandra Ram Chouhan bearing Claim Case No.77/10 claiming total compensation of Rs.89,95,000/-.

4. During pendency of Claim Case No.77/10, applicant No.1-Laldev Ram, father of deceased Chandra Ram, died and he was substituted by his sons namely Krishna Ram & Dusaad Ram as claimants before the Claims Tribunal.

5. Non-applicants No.1 & 2 have jointly filed their written statement to claim applications and denied the contents made therein, except admitted facts. It is mentioned that non-applicant No.1-driver was driving the offending vehicle slowly on his side of the road and seeing one Indica car coming from opposite direction at high speed, he stopped his vehicle on his side, but despite stopping of offending vehicle, said car hit the standing offending vehicle and as such, the accident had taken place solely because of rash and negligent act of the driver of car i.e. deceased. It was also mentioned that on the date of accident, the offending vehicle was fully insured with non-applicant No.3, therefore, the insurance company is liable to make payment of compensation to the claimants, if any awarded by the Claims Tribunal.

6. Non-applicant No.3 also filed its written statement to claim application and denied the averments made therein. It was pleaded that the claimants have not filed any document to show the age, employment and income of the deceased. The claim made by the claimants is highly exaggerated as in earlier claim applications filed by claimants before the Claims Tribunal at Kunkuri and withdrawn subsequently, lesser amount of compensation was claimed. Accident being a head on collusion between two vehicles, it was a case of contributory negligence. Insurance company of Indica car has not been impleaded as party; no information regarding accident was given to insurance company with regard to the accident in question and that the offending vehicle was being plied by non-applicants No.1 & 2 in breach of conditions of insurance policy. In these circumstances, in particular the fact that there was breach of conditions of insurance policy, the insurer is not liable to indemnify the insured.

7. On the basis of pleadings of the parties, the Claims Tribunal has framed as many as seven issues; granted opportunity of leading evidence to the parties in support of their respective cases and after appreciating the pleadings and evidence brought on record by the parties in both claim cases, vide common award partly allowed both the claim applications. The Claims Tribunal has held that there was no element of contributory negligence and accident occurred due to rash and

negligent driving of non-applicant No.1, driver of offending vehicle, resulting in death of deceased Chandra Ram. While holding that there was no violation of any condition of insurance policy, the Claims Tribunal awarded a total sum of Rs.60,57,450/- to claimants in both claim cases and held insurance company liable to make payment of amount of compensation to claimants. The Claims Tribunal has directed that claimants – Raimuni Bai & Krishna Ram in Claim Case No.77/10 will be entitled to get a sum of Rs.10,17,450/- & 5,00,000/- respectively, out of total amount of compensation awarded.

8. Mr. Rao, learned counsel for appellants in MAC No.258/13 submits that amount of compensation awarded by the Claims Tribunal on account of death of Chandra Ram, who was 44 years old on the date of accident, is not only meager but also contrary to the materials and evidence available on record. He further submits that while computing compensation on account of loss of dependency, the Claims Tribunal has not made any addition in the established income of the deceased towards future prospects as per decision of Hon'ble Supreme Court in the matter of **National Insurance Company ltd. vs. Pranay Sethi & ors** reported in **(2017) 16 SCC 680** wherein it has been held that while determining income, an addition of 30% of established income of deceased towards future prospects, where the deceased had a permanent job and was between 40

to 50 years of age, is to be made. He also submits that the Claims Tribunal has wrongly applied multiplier of 13 instead of 14, as has been prescribed by the Supreme Court in the matter of **Sarla Verma vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121**. Even the amount awarded under other conventional heads are also on lower side. Thus, it is clear that quantum of compensation awarded by the Claims Tribunal is inadequate and that it needs to be suitably enhanced. Lastly it is submitted that the Claims Tribunal erred in awarding a sum of Rs.5,00,000/- to claimant Krishna Ram, brother of deceased, because he was not at all dependent on the deceased as he himself is having separate income and family, therefore, the said finding of the Claims Tribunal is liable to be interfered with.

9. Per contra, Mr. Maheshwari, learned counsel appearing on behalf of Mr. Abhishek Sinha, Advocate for Insurance Company in both appeals, would argue that the amount of compensation awarded by the Claims Tribunal is infact on higher side and it has to be reduced. He submits that the Claims Tribunal should have held that the accident was the result of head on collusion between two vehicles, as such, it is a case of contributory negligence and drivers of both the vehicles involved in the accident are contributory negligent to the extent of 50%. Reliance is placed on the judgment of Hon'ble Supreme Court

rendered in **Bijoy Kumar Dugar vs. Bidya Dhar Dutta & ors** reported in **(2006) 3 SCC 242**.

Learned counsel further argued that the Claims Tribunal has not made permissible deduction from the income of deceased i.e. income tax & vehicle allowance as mentioned in the salary certificate of deceased. He submits that vehicle allowance cannot be said to be for the benefit of family members of the deceased, as the said facility is for the employee only for performing journey in connection with office affairs. In support of this submission, learned counsel has placed his reliance on the decision of Hon'ble Supreme Court given in the matter of **National Insurance Company Vs. Indira Shrivastava** reported in **(2008) 2 SCC 763**.

He further submits that the Income Tax Department has issued the slab for calculating income tax for the assessment year 2009-10 in which income up to Rs.1,50,00/- has been exempted from income tax, whereas deduction @ 10% has been shown on the income upto Rs.3,00,000/-; 20% upto Rs.5,00,000/- and 30% over and above Rs.5,00,000/-.

In view of above submission, learned counsel prays for reduction of amount of compensation awarded by the Claims Tribunal vide impugned award.

10. Mr. Rishi Rahul Soni, learned counsel appearing for claimant-mother & brother of deceased, supports the impugned award to the extent of apportionment of amount of compensation

between the widow & son and mother & brother of the deceased.

11. We have heard learned counsel for the parties and perused the record of both the appeals.

12. In order to appreciate rival submissions, it would be proper to first take note of the grounds urged by appellant Insurance Company in MAC No.279/13.

13. Appellant Insurance Company has assailed the impugned award mainly on three grounds. Firstly that present is a case of contributory negligence. Secondly, the amount paid to deceased towards 'vehicle allowance' has not been deducted from the income of deceased while calculating compensation. Thirdly, the Claims Tribunal has not deducted income tax from the annual income of deceased.

14. So far as the question of contributory negligence is concerned, in the FIR it has been mentioned that when the car of deceased reached village Reda, Sarangarh, at that point of time, one truck coming from opposite direction dashed the car. Claimants have also specifically pleaded in their claim application that there was head on collusion between two vehicles. In the written statement filed on behalf of driver & owner of offending vehicle it is mentioned that seeing that a car is coming at a very high speed, non-applicant No.1, driver of offending vehicle, stopped his vehicle on his side of road, however, due to high

speed, driver of car lost control over his vehicle and dashed against stationary offending vehicle.

15. Driver of offending vehicle was examined as NAW-1 before the Claims Tribunal and he has stated in his statement that accident took place due to rash and negligent driving of car by the deceased. This witness in his statement in the shape of an affidavit under Order 18 Rule 4 of the Code of Civil Procedure, 1908 has stated that driver of car lost control over his vehicle, came to wrong side of road and dashed against the truck, which was standing on its side of road. In the cross examination, this witness had denied the suggestion that accident took place when car was proceeding on its own side of the road.

16. Appellant No.1 in MAC No.258/13 was examined as AW-1 on behalf of the claimants and she has stated in her statement that the accident occurred due to negligence on the part of driver of offending vehicle. In the cross examination, she has admitted that accident occurred due to head on collusion between car and truck, however, the car was proceeding along the correct side of road.

17. From the evidence of the claimant (AW-1), who was one of occupants of the car, and driver of offending vehicle, it is apparent that each of them tried to put the entire blame for the accident on the driver of other vehicle.

18. In order to prove the accident, the claimants have filed the documents of criminal case registered by police against non-applicant No.1. In the spot map prepared by the police and annexed along with Crime Details Form (Ex.PA-3), the place of accident is shown as the side on which offending vehicle was proceeding from Sarangarh to Raigarh, but the place of vehicle mentioned in spot map will only not to be considered to be place of accident. There may be several factors for considering the manner in which accident took place. In case of **Jiji Kuruvilla & ors Vs. Kunjujamma Mohan & ors** reported in **(2013) 9 SCC 166** Hon'ble Supreme Court while dealing with issue of contributory negligence has held thus:-

> "20.5 The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual."

19. Keeping in mind the evidence available on record and the above judgment of Hon'ble Supreme Court, which is squarely applicable to the facts of present case, we find force in the submission of learned counsel for appellant Insurance Company that it was a case of contributory negligence on the part of drivers of both vehicles.

20. So far as the ratio of contributory negligence is concerned, this issue has also been considered and decided by Hon'ble Supreme Court in the case of Bijoy Kumar Dugar (supra) in following pertinent words:-

> "12. It was head- on collision in which both the vehicles were damaged and unfortunately, Raj Kumar Dugar died on the spot. The MACT, in our view, has rightly observed that had it been the knocking on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident.........."

21. In view of above dictum and considering the entire material available on record, we hold that both the drivers of the vehicles involved in the accident were contributory negligent to the extent of 50% each.

22. Coming to next submission made by learned counsel for appellant Insurance Company that the Claims Tribunal should have deducted amount paid towards income tax from the gross

salary of the deceased. The contribution made towards General Provident Fund, General Insurance Scheme etc. are always repayable to an employee at the time of retirement, death for any reason. Whereas, Income Tax, Professional Tax etc. deducted from salary of an employee directly goes to the coffers of the government under specific head and there is no return. The Supreme Court as well as various High Courts have held that the claimants are entitled to be compensated for the loss suffered by them, that is to say, the amount which they would have been getting when the deceased was alive or after his death. Thus, the amount paid towards income tax, which is not repayable by the employer, is to be deducted from the salary of deceased while computing the compensation under the head 'loss of dependency'. In case at hand, as per last pay certificate of deceased, his monthly salary was Rs.46,133/-, therefore, there is no doubt that annual income of deceased was in taxable range. Perusal of record of Claim Case No.77/10 i.e. statement showing recovery of income tax for assessment year 2008-09, also reflects that the deceased was paying income tax. Even, in the month of April, 2019, a sum of Rs.2,500/- was recovered from the deceased towards income tax. Thus, there is sufficient material on record showing that the deceased was an income tax payee and was continuously filing income tax returns. In such a situation, the Claims Tribunal while determining monthly income of deceased for computing loss of dependency should have deducted the amount paid towards income tax by the deceased, which it failed.

23. As per salary slip, at the time of accident gross salary of deceased was Rs.46,133/- p.m. and there was deduction towards General Provident Fund (GPF) and General Insurance Scheme (GIS) from the salary of deceased. Thus, after deducting a sum of Rs.37,032/- (3086 x 12), which is 10% of basic + grade pay of deceased as mentioned in salary certificate (Ex.P-12), towards General Provident Fund and Rs.4,800/- (400x12) towards General Insurance Scheme, a total sum of Rs.41,832/-, from annual gross salary, annual income of deceased comes to Rs.5,11,764/- (553596-41832) and the deceased would have paid income tax on the aforesaid amount i.e. Rs.5,11,764/-. As per income tax rates/slabs applicable for the assessment year 2009-10, no tax was payable upto income of Rs.1,50,000/-; income tax @ 10% was payable from Rs.1,50,000/- to Rs.3,00,000/- and a sum of Rs.15,000/- + 20% from Rs.3,00,000/- to Rs.5,00,000/-.

24. Accordingly, first Rs.1,50,000/- is not taxable income of deceased. Remaining Rs.3,61,764/- (511764-150000) is taxable income. As per tax slab rate, from Rs.1,50,000 to 3,00,000/-, there is 10% tax. So income tax payable on Rs.1,50,000/-, would be Rs.15,000/-. From Rs.3,00,001/- to Rs.5,00,000/-, tax slab rate is 20%. So income tax payable on next Rs.2,00,000/- would be Rs.40,000/-. From Rs.5,00,001/-

onwards tax slab rate is 30% and thus income tax payable on the amount exceeding Rs.5,00,000/-, i.e. Rs.11,760/- would be Rs.3,528/-. The taxable income of the deceased thus comes to Rs.58,528/- (15000+40000+3528). On this amount, 'Education Cess' at the rate of 3% i.e. Rs.1,756/- (3% of 58528) is to be added and thus the net income tax liability of deceased for the assessment year 2009-10 comes to Rs.60,284/- (52528+1756). As such, the deceased would have paid a total sum of Rs.60,284/- as income tax in assessment year 2009-10. Hence, the total amount deductible towards income tax from the annual income of deceased comes to Rs.60,284/-.

25. Coming to next submission made by learned counsel for Insurance Company that the Claims Tribunal should have deducted ‘vehicle allowance’ from the income of the deceased while calculating monthly income of the deceased. Salary certificate of the deceased produced by the claimants has been marked as Ex.A-12, wherein the total salary is mentioned as Rs.46,133/- per month inclusive of vehicle allowance of Rs.9,000/-. The Claims Tribunal had taken the gross salary, as mentioned in the salary slip, to be the monthly income of deceased. It is settled position that the amount granted under the category of personal allowances shall not be taken into consideration for determining monthly income of deceased for the purpose of calculating loss of dependency. Vehicle allowance is a perk given to an employee in respect of a vehicle

which is used in connection with the affairs of the department or for official affairs or for coming to the office from residence. Thus, it is clear that vehicle allowance was being paid to the deceased in connection with use of vehicle by him in connection with his official duty, therefore, it cannot be said that the amount of vehicle allowance was also enjoyed by the family members of the deceased. As the aforesaid amount of vehicle allowance was not beneficial to the entire family of the deceased during his lifetime, we are of the considered view that the same cannot be treated as part of the income of the deceased for the purpose of calculating compensation under the head loss of dependency. We, therefore hold that the Claims Tribunal was not justified in assessing income of the deceased. The Claims Tribunal should have deducted amount of Rs.9,000/- towards vehicle allowance from the gross salary of the deceased while determining his monthly income.

26. Now coming to appeal filed on behalf of claimants/appellants seeking enhancement in the compensation awarded to them by the Claims Tribunal.

27. Perusal of the impugned award reveals that the Claims Tribunal has not awarded any amounts towards future prospects ignoring the decision of the Supreme Court in the matter of **Pranay Sethi (supra)** wherein it has been that in case deceased, victim of motor accident, was between the age of 40

to 50 years and in government job, an addition of 30% of established income of deceased towards future prospects should be made. Likewise, the Claims Tribunal while computing compensation has wrongly applied multiplier of 13 instead of 14, ignoring the decision of Hon'ble Supreme Court in the case of **Sarla Verma (supra)** wherein it was held that multiplier of 14 is to be taken when the age of deceased is between 41 to 45 years.

28. We have noticed that the amount awarded by the Claims Tribunal under other conventional heads i.e. Rs.25,000/- for loss of consortium and loss of love & affection and Rs.5,000/- for funeral expenses, are also on lower side in view of decision of Hon'ble Supreme Court in the matter of Pranay Sethi (supra) & Magma General Insurance (supra), and therefore, the same need to be suitably enhanced.

29. As regards the submission made by learned counsel for appellant with respect to grant of Rs.5,00,000/- to brother of deceased i.e. claimant Krishna Ram in Claim Case No.77/2010, who was 42 years old on the date of his impleadment. Initially, Claim Application No.77/10 was filed only by parents of the deceased and said Krishna Ram has been substituted only after death of claimant No.1, father of deceased. On the date of filing of Claim Case No.77/2010, said Krishna Ram has not been shown to be dependent on the deceased. Krishna Ram

being 42 years old must have his own family and income, which can be presumed. Furthermore, said Krishna Ram had entered into witness box before the Claims Tribunal and in Para-12 of his cross-examination he has admitted that he maintains his mother. From this admission it is clear that said Krishna Ram was not dependent upon the deceased, rather after the death of deceased it is he who is maintaining mother of deceased. In these circumstances, we are of the view that said Krishna Ram, brother of deceased, cannot be held to be dependent upon the deceased and as such, he is not entitled for any amount of compensation on account of death of deceased. Impugned award so far as it relates to grant of part compensation to Krishna Ram is liable to be set aside and is hereby set aside.

30. In view of above, this Court proposes to recalculate amount of compensation payable to claimants/respondents No.1 to 3.

31. As per salary slip of deceased, annual income of deceased is considered as Rs.5,53,596/- (46133x12), out of which Rs.1,08,000/- (9000x12) is deducted towards vehicle allowance. After deducting aforesaid amount, the annual income of deceased comes to Rs.4,45,596/- and since at the time of accident the deceased was between the age group of 40 to 50 years and was government servant, in view of law laid down in the matter of **Pranay Sethi's case** (supra), annual income of deceased is required to be increased by 30% towards future prospects, which comes to Rs.5,79,274=80

paise, which is rounded off to Rs.5,79,275/-. Out of this amount, amount paid towards income tax is to be deducted i.e. Rs.60,284/- and accordingly, the annual loss of income comes to Rs.5,18,991/-. After deducting 1/3rd towards personal & living expenses of deceased, annual loss of dependency would come to Rs.3,45,994/- (518991-172997). By applying multiplier of 14, as held above, to annual loss of dependency, total loss of dependency would come to Rs.48,43,916/-(348994x14). Besides this, appellant No.1 in MAC No.258/13 is entitled for a sum of Rs.40,000/- for spousal consortium, appellant No.2 is entitled for a sum of Rs.40,000/- for parental consortium, & respondent No.5, mother of deceased, is entitled for a sum of Rs.40,000/- for filial consortium, as held by Hon'ble Supreme Court in the matters of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & ors** reported in **(2018) 18 SCC 130** & Pranay Sethi (supra). In addition to aforesaid amount, they are also entitled to get a sum of Rs.15,000/- for funeral expenses; Rs.15,000/- for loss of estate and Rs.10,000/- for pains & sufferings though death was instantaneous. Thus, appellants & respondent No.5 in MAC No.258/13 are entitled for a total sum of Rs.50,03,916 (4843916+120000+ 15000+ 15000+10000).

32. As we have already held that there was contributory negligence to the extent of 50% on the part of driver of car i.e. deceased, and driver of offending vehicle, therefore, liability to pay

compensation is apportioned in the ratio of 50:50 between driver of offending vehicle and the deceased. Accordingly, appellant Insurance Company is ordered to pay 50% of the amount i.e. Rs.25,01,958/- to the claimants.

33. So far as apportionment of above awarded amount of compensation is concerned, mother of deceased, who is also one of the claimants, is also entitled for amount of compensation. However, from the materials available in record it is apparent that apart from deceased, claimant Smt. Raimuni, mother of deceased, has two more sons namely Dusad Ram & Krishna Ram. Dushad Ram is a government employee and working as Scientist, whereas another son Krishna Ram failed to prove himself to be dependent on the deceased, as discussed in preceding paragraphs. Thus, it can be safely inferred that claimant Smt. Raimuni, mother of deceased, was not dependent solely on the deceased. In such a situation, we deem it fit and proper to award one-fourth of the above awarded amount to claimant Smt. Raimuni.

34. Accordingly, out of the above awarded amount of Rs.25,01,958/-, an amount of Rs.6,01,958/- with interest is being awarded to Smt. Raimuni, mother of deceased. Remaining amount of compensation i.e. Rs.19,00,000/- with interest is being awarded to claimants Smt. Kamla Chouhan & Pushpraj Chouhan, wife & son of deceased. The amount of

compensation shall carry simple interest @ 6% p.a. from the date of filing of application till actual realization.

35. Claimant Krishna Ram is not entitled for any amount of compensation.

36. In the result, both the appeals are allowed in part. Impugned award is modified to the extent indicated above.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	(Parth Prateem Sahu)
Chief Justice	Judge

roshan/-