

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****M.A (C) No. 1129 of 2013**

*{Arising out of Order dated 09.10.2013 passed in Case No. 93/WC Act/2011F. by the Court of Commissioner for Employees Compensation Act, Labour Court, Durg. }*

The New India Assurance Company Limited, Branch Office Chouhan Estate, Near Chandra Mourya Talkies Bhilai, District Durg, Chhattisgarh, Through: its Divisional Manager, Divisional Office II<sup>nd</sup> Floor, Rama Trade Centre, Above Axis Bank, Opp. - Rajiv Plaza, Bus Stand Road, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.

---- Appellant

**Versus**

1. Mohd. Noushad Hashmi S/o Late Abdul Rafique, aged 21 years.
2. Mohd. Irshad Hashmi, S/o Late Abdul Rafique, aged 19 years.
3. Ku. Nehal Hashmi D/o Late Abdul Rafique, aged 18 years.
4. Abdul Aziz S/o Late Abdul Haque, aged 70 years.

All are resident of Takiyapara, Durg, District Durg, Chhattisgarh.

5. Abhishek Jain S/o Niranjnlal Jain, aged 27 years, R/o Ward No. 57, Saket Colony, Katulbod, Durg, District Durg, Chhattisgarh.

---- Respondents

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|---------------------------------|---|--------------------------------|
| For Appellant/Insurer           | : | Shri Dashrath Gupta, Advocate. |
| For Respondents No. 1, 2, 4 & 5 | : | Shri Sumit Singh, Advocate.    |
| For Respondent No. 3            | : | None.                          |

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**Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**  
**Hon'ble Shri Parth Prateem Sahu, Judge**

**Judgment on Board**

**Per P.R. Ramachandra Menon, Chief Justice**

**06.10.2020**

1. Appeal is at the instance of the Insurance Company. Grievance is against the verdict passed by the Commissioner, Labour Court, Durg, granting exorbitant amount as compensation in connection with the death of the employee concerned as payable under the Employee's Compensation Act, 1923 (*for short 'the Act, 1923'*), contending that substantial questions of law are involved in the matter.

2. The factual matrix reveals that on 14.08.2011, the deceased by name Abdul Rafique was driving a car bearing registration No. CG-07-MM-6346 carrying the 5<sup>th</sup> Respondent and the members of his family as the passengers. The vehicle actually belonged to the 5<sup>th</sup> Respondent and the same was insured by the Appellant herein. While proceeding to Gourela, Bilaspur, the Driver lost control over the vehicle which fell into a trench near village Kevchi whereby the Driver sustained fatal injuries and he succumbed to the same. This was sought to be compensated by filing claim petition before the Commissioner by the two sons and the daughter, joining hands with the father of the deceased.

3. It was contended before the Commissioner that the deceased, by virtue of his employment as a Driver was having a monthly salary of Rs. 8000/-. The Commissioner reckoned a sum of Rs. 8000/- as the monthly income. However, without any regard to the actual age of the deceased who was 51 years of age, instead of applying the relevant factor of 149.67, the Commissioner reckoned it as 184.17 and it was multiplied by 50% of the salary to fix the compensation as Rs. 7,36,680/-, the correctness of which is put to challenge in this appeal.

4. When the matter came up for consideration before this Court on 20.07.2020, taking note of the nature of the contentions, we framed the substantial question of law, ordering notice to the Respondents, in the following terms:

"Whether the impugned verdict passed by the Court of Commissioner for Employees Compensation Act and the Labour Court, Durg contrary to the evidence brought on record could be termed as perverse and whether it requires interference invoking the power in this appeal preferred by the Insurer of the offending vehicle?"

5. The service of notice is complete and the matter was heard accordingly. It is pointed out by the learned counsel for the Appellant that

there is absolutely no basis for the observation made by the Commissioner in paragraph 7 of the award that the deceased was 40 years of age. No where was there any contention and no evidence was adduced in this regard, whereas the evidence tendered before the Commissioner as clearly deposed by the 1<sup>st</sup> Respondent/son of the deceased in his cross-examination is that the deceased was 51 years of age. The deceased was also having a driving licence issued by the competent authority of the Motor Vehicle Department as per which the date of birth was shown as 29.03.1961. As it stands so, the admitted age of the deceased (as admitted by the Claimant-son) was virtually ignored by the Commissioner to fix it at 40 years and adopting the relevant factor as 184.17 instead of the actual factor of 149.67. The course pursued by the Commissioner being contrary to the evidence on record, it is nothing but perverse and involves substantial questions of law, submits the learned counsel for the Appellant.

6. We have gone through the entire materials on record and find considerable force in the said submission.

7. There is no dispute to the fact that the deceased was aged 51 years on the date of accident as clearly spoken to by his son, the 1<sup>st</sup> Respondent in his cross examination. In the case of a person aged about 51 years, the relevant factor to be applied is 149.67 as per Schedule IV. The actual compensation payable in terms of Section 4 of the Act, 1923, is the relevant factor multiplied by 50% of the monthly wages i.e.  $149.67 \times 8000 \times 50 / 100 = \text{Rs. } 5,98,680/-$  Since the Commissioner has awarded a sum of Rs. 7,36,680/-, there is an excess of **Rs.1,38,000/-** which requires to be scaled down. In the above circumstances, we answer the substantial question of law to the effect that the adoption of factor of 184.17 by the Commissioner for fixation of the compensation being contrary to the evidence brought on record with reference to the age of the deceased, it is to be termed as perverse and requires interference.

8. Accordingly, we allow the appeal to the said extent. It is open for the Appellant to pursue appropriate steps for recovery of the excess amount paid, in accordance with law.

Sd/-  
(P.R. Ramachandra Menon)  
**CHIEF JUSTICE**

Sd/-  
(Parth Prateem Sahu)  
**JUDGE**

Amit