

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 519 of 2015**

1. Ram Kumar Kumbhkar, S/o Shri Sukul Kumbhkar, aged about 30 years.
2. Smt. Sheetla, W/o Shri Ram Kumar Kumbhkar, aged about 27 years

Both are resident of Karaihapara, Ramsagripar Ratanpur, Police Station And P.O. Ratanpur, District- Bilapur (CG)

---- Appellants**Versus**

1. Ganga Ram Bharadwaj, S/o Shri Punni Lal Bharadwaj, aged about 30 yrs, R/o Village Jali, Near Guru Ghasidas Jai Stambh Chowk, Tahsil Kota, P.S. Ratanpur, District Bilaspur (CG)
2. Bharat Lal Bharadwaj, S/o Sitaram Bharadwaj, aged about 20 years R/o Village Jali, Satnamipara, Tahsil Kota, P.S. Ratanpur, District- Bilaspur (CG)

---- Respondents

For Appellants	:	Mr. Dashrath Prajapati, Advocate
For Respondents	:	None

Hon'ble Shri P. R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****Order On Board****Per Parth Prateem Sahu, J****16/03/2021**

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 9th Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') vide award dated 10.3.2015 passed in Claim Case No.520/2014 by which the Claims Tribunal partly allowed application of claimants and awarded a

total amount of Rs.2,35,000/- as compensation in a death case.

2. Facts of the case, in brief, are that on 3.10.2013 at about 4.30 a.m. after the school hours, Ritu, aged about 8 years, was waiting for her friend by standing beside the road, at that time one Matador 407 bearing registration number CG04-G-8073, coming from the side of Bilaspur, driven in rash and negligent manner by non-applicant No.2, dashed Ritu and ran over her. Ritu succumbed to injuries on spot.
3. Claimants, who are parents of deceased, have filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking compensation of Rs.19,00,000/- under various heads.
4. Non-applicant Nos.1 & 2 did not appear before the Claims Tribunal, therefore, they were proceeded ex-parte.
5. Upon appreciation of pleadings and evidence placed on record by the claimants, the Claims Tribunal by the impugned award arrived at the conclusion that deceased died in a motor vehicular accident which took place from offending vehicle due to rash and negligent driving of non-applicant No.1 and accordingly, allowed claim application in part; upon assessing annual income of deceased at Rs.15,000/- on notional basis, applying multiplier of 15, awarded a total sum of Rs.2,35,000/- as compensation.
6. Mr. Dashrath Prajapati, learned counsel representing claimants/appellants submits that the amount of compensation awarded by the Claims Tribunal under the heads of 'love &

affection' and 'funeral expenses' is on lower side and deserves to be enhanced as per decision of Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680** wherein a standardised formula has been laid down to award compensation towards loss of consortium, loss of estate and funeral expenses i.e. Rs.40,000/-, Rs.15,000/- & Rs.15,000/- respectively. He further submits that the parents of deceased are also entitled for compensation towards loss of parental consortium. The amount of compensation awarded to appellants, who lost their young child, is not appropriate. In support of his contention learned counsel places his reliance on the decision of Hon'ble Supreme Court in case of **Kishan Gopal & another vs. Lala & ors** reported in **(2014) 1 SCC 244**.

7. We have heard learned counsel for appellants and perused the record of the Claims Tribunal.
8. Application for grant of compensation before the Claims Tribunal has been filed by unfortunate parents of 08 years old deceased who died in a motor vehicular accident. No doubt, the love and affection of the parents for a 08 years old child cannot be equated in terms of money. Therefore, while awarding compensation for accidental death of children, the quantum of compensation is not to be a paltry amount, but it has to be a just and reasonable compensation, which can be assessed after taking into consideration the family background, academic activities and other material available including age

of child and occupation & age of respective parents. In case at hand, parents of deceased child have only pleaded that the deceased was aged about eight years and was studying in school. In such a situation, no income can be assessed for a child aged about eight years. Hence, a pragmatic approach should be adopted in such cases by awarding lump sum compensation. The Hon'ble Supreme Court in the case of **Puttamma v. K.L. Narayana Reddy** reported in **(2013) 15 SCC 45** has considered the issue with regard to award of compensation in case of accidental death of children and has divided them into groups i.e. upto the age of 05 years and above the age of 05 years, and held that for children more than 5 years age, a fixed amount of Rs.1,50,000/- is payable by way of compensation. 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.”

9. In the case at hand, admittedly on the date of accident the deceased was more than five years of age i.e. 8 years old, therefore, in the light of decision of Hon'ble Supreme Court in the case of Puttamma's case (supra), the claimants are entitled for a lump sum compensation of Rs.1,50,000/-. Even after adding maximum amount on other conventional heads i.e. Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, total compensation will be Rs.2,20,000/- However, in the instant case, the Claims Tribunal has already awarded a total amount of Rs.2,35,000/- as compensation to the claimants, which is more than the amount for which appellants are entitled for. Therefore, it cannot be said that the amount of compensation awarded by the Claims Tribunal is meagre or on lower side.
10. The case law of Kishan Gopal (supra) relied upon by learned counsel for appellants is not applicable to the facts of present case. In that case, the facts were that the child (boy) was above 10 years, assisting his father in agricultural works. In the

case at hand, the appellants have only pleaded that deceased child was a student aged about 8 years.

11. For the foregoing reasons stated above, in the opinion of this Court, the amount of compensation awarded is just and proper in the given facts of the case. We do not find any substance in this appeal, which is liable to be dismissed and is hereby dismissed.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-