

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 9 of 2015**

1. Sondev, S/o Buttu, Aged About 35 Years
2. Smt. Kanshula, W/o Sondev, Aged About 32 Years

Both are R/o Village- Teli Marenga, P.S. Parpa, Tah. Jagdalpur, Distt. Bastar Chhattisgarh

---- Appellants/Claimants

Versus

1. Sonam Singh, S/o Budhram, Aged About 21 Years, R/o village Retawand, Police Chowki- Bastar, Tah. Jagdalpur, Distt. Bastar C.G. (Driver)
2. Bhushan Kumar Kaushik S/o Madhavlal Kaushik Aged About 32 Years R/o Katora Talab, Raipur, Distt. Raipur C.G (Owner of the vehicle)
3. The Branch Manager, The Royal Sundaram Alliances Insu.Co.Ltd., Branch Office- Commercial Complex, Devendra Nagar, Distt. Raipur C.G. (Insurer)

----Respondents/NAs

For Appellants	: Shri Pravin Kumar Tulsian, Advocate
For Respondent- 1 and 2	: None appears
For Respondent- 3	: Shri Rohitashwa Singh, Advocate

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board**

Per Parth Prateem Sahu, J.

06.01.2021

1. Appellants/Claimants preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging the impugned award dated 29.11.2014 passed by the Motor Accident Claims Tribunal, Bastar at Jagdalpur (CG) (for short, 'Claims Tribunal') in Claim Case-182 of 2011, whereby learned Claims Tribunal allowed application under Section 166 of the Act of 1988 and awarded Rs.1,70,000/- as total compensation in a fatal accident case of 11 year girl child.
2. Facts relevant for disposal of this appeal are that on 03.07.2011 when Ku. Babli aged about 11 years was returning to her house from Grocery Shop at about 12 noon, one Bolero Jeep bearing No.CG 04

HB/2054 (hereafter, referred to 'offending vehicle') driven by NA1 rashly and negligently, knocked down Ku.Babli and caused accident. In the said accident, she suffered grievous injuries over her person and died on the spot.

3. Appellants/claimants who are parents of deceased girl filed application under Section 166 of the Act of 1988 pleading therein that deceased girl, aged about 11 years was student of Class 6, she was a brilliant student and after completion of her studies, she could have appointed on a higher post, and claimed Rs.6,50,000/- as total compensation.
4. NA1 and 2 did not submit their reply to the claim application.
5. Respondent-3 /Insurance Company submitted its reply to the claim application while denying the pleadings made therein, further pleaded that Tribunal had not followed the procedure as prescribed under Rule 220 of Chhattisgarh Motor Vehicle Rules, 1994. Deceased herself was negligent and liable for the accident.
6. NA1, driver of offending vehicle was not possessed with valid and effective driving license. There was no valid permit and fitness of offending vehicle as such, there was breach of Policy conditions.
7. Learned Claims Tribunal upon appreciation of pleadings and evidence placed on record, held that Ku.Babli died on account of motor accidental injuries suffered by her due to rash and negligent driving of offending vehicle by NA1 and awarded Rs.1,70,000/- as total compensation.

8. Shri PK Tulsyan, learned counsel for the appellants submits that learned Claims Tribunal erred in awarding very meagre sum of compensation to the appellants, assessed notional income on lower side and by applying wrong multiplier, has calculated loss of dependency to the tune of Rs.1,50,000/- only. He further contended that Claims Tribunal has awarded meagre amount on other conventional heads ie Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of love and affection , and Rs.5,000/- towards loss of estate. He submits that learned Claims Tribunal has overlooked the date of accident while fixing notional income. Notional income of Rs.15,000/- per annum has been assessed by learned Claims Tribunal as mentioned in Second Schedule for non-earning persons, which came into effect on 14.11.1994. Since 1994 till 2011, there is drastic change in cost of living, price index etc., and hence notional income is to be taken into account after considering the aforementioned factors.

9. In support of his submissions, learned counsel placed reliance on ruling of Hon'ble Supreme Court in case of **Kishan Gopal and another Vs Lala and others** reported in (2014) 1 SCC 244; **National Insurance Company Limited Vs Pranay Sethi and others** reported in (2017) 16 SCC 680; and **Magma General Insurance Company Limited Vs Nanu Ram @ Chuhru Ram and Others** reported in (2018) 18 SCC 130.

10. Shri Rohitashwa Singh, learned counsel for respondent-3/Insurance Company opposing the submissions made by learned counsel for the appellants, submits that learned Claims Tribunal taking into consideration age of the deceased girl child, student of Class 6, has awarded just amount of compensation, which does not call for any interference. He further submits that

case of **Kishan Gopal** (supra) would not be applicable to the case at hand, there is no pleading with regard to nature of work of deceased.

11. We have heard respective parties and also perused record of Claim Case.

12. There is no dispute with regard to accident of deceased, Insurance of offending vehicle and liability fastened upon respondent-3/Insurance Company. Challenge in this appeal is only with regard to the quantum of amount of compensation awarded by learned Claims Tribunal.

13. To appreciate the submissions made by learned counsel for the appellants, we have perused record of Claim Case. In claim application, appellants have claimed income of the deceased as Rs.15,000/- per annum and multiplier to be applied as 15 and sought for compensation of Rs.2,25,000/- towards loss of dependency.

14. True, it is that appellants/claimants have pleaded in their application annual income of deceased as Rs.15,000/-. It cannot be ignored that claimants are residents of tribal, rural area and their occupation is of labourer. Pleadings made in the claim application are by the counsel engaged by them, but then it is the duty of Tribunal and Court to award just compensation to the victim or Legal heirs of victim. Claiming lesser amount of compensation in the application will not be a bar for awarding just amount of compensation for which the claimants are entitled for. Hence, we find it appropriate to consider whether learned Claims Tribunal has assessed the annual income of deceased correctly or not.

15. Amount of compensation claimed by parents against death of minor child and non-earning person has been considered by Hon'ble Supreme Court in case

of **Lata Wadhwa and others Vs State of Bihar and others** reported in (2001) 8 SCC 197 and held thus:

“11. Loss of a child to the parents is irrecoupable, and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well-placed officials of 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 added 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 children employed in the Company.”

16. In the aforementioned ruling, Hon'ble Supreme Court while considering claim against death of child aged in between 10-15 years, has considered contribution of the deceased child to Rs.24,000/- per annum and accordingly, aforementioned judgment was delivered by Hon'ble Supreme Court on 16.08.2001.

17. In the case at hand, accident took place on 03.07.2011 ie after about 10 years of date of passing of above mentioned judgment. Definitely, after about 10 years, ie in the year 2011 cost of living, price index, etc., would have enhanced drastically.

18. Case of **Lata Wadhwa** (supra) was by a Bench of three Hon'ble Judges, whereas, case of **Kishan Gopal** (supra) was decided by two Hon'ble Judges of Supreme Court. Hence, we find it appropriate to take support of **Lata Wadhwa**

(supra) and to held contribution of deceased girl towards her family to Rs.30,000/- per annum on the date of accident.

19. There will be deduction of 50% towards personal and living expenses. Hence, appellants are entitled for compensation of Rs.15,000/- per annum. Upon applying multiplier of 15 as prescribed under Second Schedule, compensation is worked out to Rs.2,25,000/- (15000 x 15).

20. Apart from above, we find it appropriate to award Rs.40,000/- towards loss of filial consortium, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses.

21. Now, appellants/claimants will be entitled for total sum of **Rs.2,95,000/-** (225000 + 40000 + 15000 + 15000) instead of Rs.1,70,000/- as awarded by learned Claims Tribunal.

22. The aforementioned amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realisation. Other conditions imposed by learned Claims Tribunal shall remain intact.

23. In view of above, appeal is allowed in part and the impugned award is modified as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 111 of 2021**

{Arising out of Order dated 06.01.2021 passed in MAC No. 9 of 2015 passed by the learned Division Bench}

1. Sondev, S/o Buttu, aged about 35 years, R/o Village – Teli Marenga, P.S. Parpa, Tahsil Jagdalpur, District Bastar (C.G.)
2. Smt. Kanshula, W/o Sondev, aged about 32 years, R/o Village – Teli Marenga, P.S. Parpa, Tahsil – Jagdalpur, District Bastar (C.G.)

---- Applicants

Versus

1. Sonam Singh, S/o Budhram, aged about 21 years, R/o Retawand, Police Chowki – Bastar, Tahsil Jagdalpur, District Bastar (C.G.)
2. Bhushan Kumar Kaushik, S/o Madhavlal Kaushik, aged about 32 years, R/o Katora Talab, Raipur, District Raipur (C.G.)
3. The Branch Manager, The Royal Sundaram Alliances Insurance Co. Ltd., Branch of Office – Commercial Complex, Devendra Nagar, Raipur, District Raipur (C.G.)

---- Non-applicants

For Applicants	:	None.
For Non-applicants	:	None.

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

Order on Board**Per Path Prateem Sahu, Judge****26.02.2021**

1. This MCC has been registered on account of some mistake in mentioning of the case number in the running pages of the judgment dated 06.01.2021 passed in MAC No. 9 of 2015. Though, in the first page of the said judgment, the case number has correctly been mentioned as

'MAC No. 9 of 2015', but in the running pages, the same has been mentioned as 'Mac 9 of 2014'.

2. It is ordered that the case number 'Mac 9 of 2014' mentioned in the running pages of the judgment dated 06.01.2021 passed in MAC No. 9 of 2015, be read as 'MAC No. 9 of 2015'. A copy of this order be placed in the records of MAC No. 9 of 2015.
3. Accordingly, this MCC stands allowed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge