

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1273 of 2014**

1. Smt. Bindeshwari w/o Manoj Khatri aged about 32 years
 2. Manoj Khatri S/o Damodar Lal aged about 37 years
- Both are residence of Santoshi ward Jagdalpur District Bastar C.G.

-----Appellants**VERSUS**

1. Sapan Verma @ Chhotu S/o B.N. Verma aged about 29 years R/o Near Babaram dev Mandir Santoshi ward Jagdalpur District Bastar C.G.

----Driver

2. Ramkrishna Yadav S/o late H.S. Yadav [DELETED]
 - a. Raja Yadav S/o late Ramkrishna Yadav, Resident of opposite 1st milestone, Dongaripara Sahid Dundadhur ward Post Jagdalpur, District Bastar Chhattisgarh

-----Respondents

For Appellants	:	Mr. Pravin Kumar Tulsyan, Advocate.
For Respondent 1&2	:	None.

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

Per Parth Prateem Sahu, J.**13/04/2021**

1. Legality and propriety of the impugned award dated 05.07.2014 passed by learned Motor Accident Claims Tribunal, Bastar, Jagdalpur, Chhattisgarh (for short "Claims Tribunal") in claim case no. 66/2013 is put to challenge in this appeal.
2. Relevant facts disposal of this appeal are that, on 19.01.2012, at about 11:00 am when Sunaina Malik was going to nearby Anganbadi school along with her mother, one motor cycle bearing registration no. CG17J6963 (henceforth "offending vehicle"), driven by non-applicant 1 rashly and negligently dashed

minor Sunaina Malik. In the said accident, she suffered grievous injuries over her person, she was immediately taken to Maharani Hospital, Jagdalpur, from where, she was referred to higher medical centre at Raipur, but on the way, she succumbed to injuries.

3. Appellants-claimants who are parents of the deceased minor filed an application under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs. 15,65,000/-, pleading therein that on the date of accident minor deceased was aged about 2 years and 3 months, they have incurred transportation expenses of Rs. 15,000/-; and claimed compensation on different heads.
4. Non-applicant 1 submitted reply to the claim application, while denying the pleadings made therein, it was further pleaded that non-applicant 1 was not involved in the accident, false and fabricated case has been registered against him, as such, he is not entitled for payment of any amount of compensation.
5. Non-applicant 2 denied the pleadings made in the claim application, it was further pleaded that he was owner of offending vehicle which has been falsely involved in the case, as such, he is not entitled to payment of any amount of compensation.
6. Learned Claims Tribunal on appreciation of pleadings and evidence placed on record by the respective parties allowed the application in part and awarded total sum of Rs. 55,000/- as compensation.
7. Mr. Pravin Kumar Tulsyan, learned counsel for the appellants submits that learned Claims Tribunal erred in awarding very meagre amount of compensation. He submits that the Tribunal has awarded only Rs. 50,000/- against the death of minor girl child of the appellants and Rs. 5,000/- towards funeral expenses, overlooking the judgment passed by Hon'ble Supreme

Court in the case of ***Kishan Gopal v. Lala and others*** reported in **(2014) 1 SCC 244**, wherein Tribunal ought to have awarded Rs. 5,00,000/- as total compensation and ***National Insurance Company Ltd. vs. Pranay Sethi*** reported in **(2017) 16 SCC 680**.

8. No one appeared on behalf of Respondent 1, though served.
9. During the pendency of the appeal, Respondent 2 died and his son has been substituted as legal representative. Notice through speed post was sent to Respondent 2(a) on 13.01.2021. When the case is listed for hearing today ie. 13.04.2021, office report shows that the notice is awaited. As the notices have been sent to Respondent 2(a) through speed post, we declare the service of notice to be completed under the provisions of proviso to Rule 167 of High Court of Chhattisgarh Rules, 2007 as deemed service.
10. We have heard learned counsel for the respective parties and also perused the record.
11. The impugned award fixing liability upon Respondents 1 and 2 is not put to challenge by them. It is the appeal for enhancement of amount of compensation only.
12. On the date of accident, age of minor girl deceased Sunaina was 2 years, as mentioned in post mortem report Ext. A-3, which is not in dispute. In the cases of death of minor child the Hon'ble Supreme Court has accepted the law enunciated in the case of ***Lata Wadhwa v. State of Bihar (2001) 8 SCC 197*** for the purpose of calculating the amount of compensation for the child failing between the age group of 5-10 years and 10-15 years and it is held that in case of death of a child between 5-10 years, amount of compensation would be 1.5 lacs and Rs. 50,000/- for other conventional heads.
13. In another case of ***Puttamma and others v. KL Narayana Reddy and another, (2013) 15 SCC 45***, Hon'ble Supreme Court while considering its

earlier judgment, considered the award of compensation for death of minor child in different category ie. up to the age of 5 years, amount of compensation be Rs. 1 lac and above 5 years, amount of compensation be Rs. 1.5 lac and held thus:

“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 directions to the Central Government through the Secretary, Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by 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 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs.1,00,000 (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs.1,50,000 (Rupees one lakh and fifty thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act.”

14. In the case of **Kishan Gopal (supra)**, as relied upon by the learned counsel for the appellants, the Hon'ble Supreme Court has considered the case where the deceased minor child was aged above 10 years and was assisting his father in agricultural activities. In the facts of the case, appellants would not get any benefit of the ruling of Supreme Court in case of **Kishan Gopal (supra)**.

15. In the facts of the case where the age of the deceased minor girl child was 2 years, we are of the considered view that the appellants are entitled for compensation of Rs. 1 lac against the loss of life of minor girl child of appellants. Claimants will further be entitled for Rs. 40,000/- towards loss of

filial consortium, Rs. 15,000/- towards funeral expenses, Rs. 15,000/- towards loss of estate.

16. Now the appellants-claimants shall be entitled for **Rs.1,70,000/-** [Rs.1,00,000+Rs.40,000+Rs.15,000+Rs.15,000] as total compensation. Other conditions of the award shall remain intact.

17. In the result, appeal is allowed in part and the impugned award is modified to the extent as indicated herein above.

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

Sd/-
(Parth Prateem Sahu)
Judge