

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 973 of 2015**

1. Jon S/o Jakariyas Uraon, aged about 35 years
 2. Smt. Asrita W/o Jon Uraon, aged about 30 years
- Both R/o Village Amera Siktatoli, Tahsil and District-Jashpur,
Civil and Revenue Distt. Jashpur Chhattisgarh

---Appellants**VERSUS**

1. Ramprasad Yadav S/o Tankadhar Yadav R/o H.No. 262 Village Khatanga, Tahsil Kunkuri, Distt. Jashpur Chhattisgarh

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2. Reliance General Insurance Company Limited Shop No. 412-413, 4th Floor, Ravi Bhawan Jai Stambh Chowk, Raipur Distt. Raipur, Chhattisgarh

----Respondents

For Appellants	:	Mr. Rishikant Mahobia, Advocate
For Respondent 2	:	Mr. Nilesh Kumar Thakur, Advocate

*(proceedings through Video Conferencing)***Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****13/08/2021**

1. Challenge in this appeal is to the impugned award dated 29.04.2015 passed by learned Motor Accident Claims Tribunal, Jashpur, C.G. (for short "Claims Tribunal") whereby learned Claims Tribunal allowed the application filed under Section 166 of the Act of 1988 in part, awarded Rs. 5,00,000/- as total compensation against death of child aged about six year.
2. Facts relevant for disposal of this appeal are, that on 11.02.2012, Asna was travelling on a pickup truck bearing registration no. CG14 D 0159 (henceforth "offending vehicle") along with others.

On the way, offending vehicle dashed with eucalyptus tree standing on road side and met with an accident. Asna and other occupants of the offending vehicle suffered grievous injuries in the accident. Ku. Asna and driver of the offending vehicle died on spot.

3. Appellants/ claimants filed an application under Section 166 of the Act of 1988 seeking compensation of Rs. 14,20,000/- on account of death of their minor girl aged about 6 years on the grounds pleaded therein.
4. Non-applicant 1/ owner of the offending vehicle submitted reply to the claim application, admitted the fact of accident and the injuries suffered to Ku. Asna. It was further pleaded that death of Asna was not on account of rash and negligent driving of offending vehicle by its driver. Offending vehicle was insured with non-applicant 2, as such, liability to pay the amount of compensation would be upon non-applicant 2.
5. Non-applicant 2/ Insurance Company submitted its reply to the claim application denying the facts pleaded therein. It was further pleaded that the offending vehicle was a goods vehicle and deceased along with others were travelling on the goods vehicle. Driver of the offending vehicle was not possessed with valid and effective driving licence. There was no valid permit and fitness.
6. Learned Claims Tribunal upon appreciation of pleadings and evidence brought on record by the respective parties has held that deceased Ku. Asna died on account of motor accidental injuries suffered by her due to rash and negligent driving of

offending vehicle by driver late Madan Ram. While exonerating the Insurance Company from its liability, awarded total sum of Rs. 5,00,000/- as compensation.

7. Mr. Rishikant Mahobia, learned counsel for the appellants-claimants submits that the Claims Tribunal though awarded Rs. 5,00,000/- as total compensation but has not awarded any amount towards the loss of consortium. He submits that this appeal is filed only with regard to non-award of loss of consortium as held by the Supreme Court in the case of **Magma General Insurance Company vs. Nanu Ram alias Chuhuru Ram and others** reported in **(2018) 18 SCC 130**.
8. Mr. N.K. Thakur, learned counsel for Respondent 2 submits that the Respondent 2/ Insurance Company has been exonerated from its liability. However, he submits that looking to the age of deceased, the Tribunal has already awarded excessive amount of compensation.
9. I have heard learned counsel for the respective parties and also perused the record of claim case.
10. In the claim application itself the claimants have pleaded age of deceased as only 6 years on the date of accident. Claims Tribunal calculated the amount of compensation by assessing income of deceased as Rs. 3,000/- per month, deducted 50% towards personal and living expenses, applied the multiplier of 15 and further awarded Rs. 1 lakh each of the appellants on the heads of love and affection and loss of consortium as well. Tribunal awarded Rs. 1 lakh to each appellant by mentioning "स्नेह, वात्सल्य,

पुत्री सुख की कमी, सामाजिक हीनता”, in view of the above head of award of compensation, submission of the learned counsel for the appellants that no amount is awarded on loss of consortium is not sustainable.

11. In case of death of child, lumpsum amount of compensation is to be awarded as they cannot be treated as earning member, particularly, when the child is less than 10 years of age. Hon'ble Supreme Court in case of ***Lata Wadhwa v. State of Bihar (2001)*** 8 SCC 197 has held thus:

“11. ...Loss of a child to the parents is irreducible, 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 the 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 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. The TISCO itself has a tradition that every employee can get one of his child employed in the company. Having regard to these facts, in their case, the contribution of Rs.12,000/- per annum appear to us to be on the lower side and in our considered opinion, the contribution should be Rs.24,000/- and instead of 11 multiplier, the appropriate multiplier would be 15. ...”

12. Further Hon'ble Supreme Court in the case of ***Puttamma and others v. KL Narayana Reddy and another, (2013) 15 SCC 45*** has considered the award of compensation in case of death of

minor child and after categorizing them in three age groups ie. up to 5 years, 5 to 10 years and 10 years and above for award of compensation has 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.”

13. In the light of the aforementioned rulings of the Hon'ble Supreme Court, the compensation awarded to the appellants cannot be said to be on lower side requiring any enhancement.
14. For the foregoing reasons, I do not find any merit in this appeal. Appeal deserves to be and is hereby dismissed accordingly.

Sd/-
(Parth Prateem Sahu)
Judge