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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

[CHHATTISGARH]

Misc. Appeal No. 1403 OF 2005

APPELLANT

(Owner of vehicle)

✓ R.P. Singh & Company, Ram
Pratap Singh, son of Late
Shri Chandrapal Singh,
resident of 13/192 Indira
Nagar, Lucknow (U.P.)

Vs

RESPONDENTS:

(Claimants)

1. Kaushal Bai, widow of Late
Shri Jeevan Dhruv, aged
about 33 years.

2. Motilal, son of Late Jeevan
Dhruv, aged about 13 years.

3. Hiralal, son of Late Shri
Jeevan Lal Dhru, aged about
11 years.

Nos.2 & 3 are Minors through
their natural guardian
respondent No.1 Kaushal Bai,
widow of Late Shri Jeevan
Dhruv.

All residents of Village Nevsa,
Tehsil & P.S. Navagarh,
District Durg (Chhattisgarh)

Driver of vehicle

4. Trilokinath Saroj, son of
Shri Alguram Saroj, resident
of Chemarsariya, P.S.
Lalgunj, Ajhara, District
Pratapgarh (U.P.)

Insurer

5. The New India Insurance
Company Limited, Jail
Garden Road, Raibareli,
District Raibareli (U.P.)

P.R. No. 3025/05
Presented by Shri. G. J. Jaiswal
dated 26/11/05

APPEAL U/S 173 OF MOTOR VEHICLES ACT
AGAINST THE AWARD/ORDER DATED 30.08.2005
PASSED IN CLAIM CASE NO.12/05 BY THE
ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL,
BEMETRA, DURG BENCH PRESIDED OVER BY SMT.
RANU DEVENKAR.

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. No. 1402 of 2005

R.P.Singh & Company

..... Appellant.

Versus

Sudhwa & Others

..... Respondents.

&

M.A. No. 1403 of 2005

R.P.Singh & Company

..... Appellant.

Versus

Kaushal Bai & Others

..... Respondents.

Mr. Abhishek Sinha with Mr. Ghanshyam Patel, Advocates for the Appellant.

Mr. P.P.Sahu with Mr. R.K.Pali, Advocates for the Respondents No.1 to 3.

Mr. Raj Awasthi, Advocate for the Respondent No.5.

Hon'ble Shri Justice Goutam Bhaduri

ORDER

(30.04.2015)

1. Both the appeals are being heard and decided together by this common order as they are arising out of the same accident and similar facts are involved.
2. The appeal M.A.No.1402/2005 is filed by the owner of the offending vehicle against the award dated 30.08.2005 passed in Claim Case No.20/2005 by the learned Additional Motor Accident Claims Tribunal, Bemetara, Durg. Likewise, the appeal M.A.No.1403/2005 is filed by the owner of the offending vehicle against the award dated 30.08.2005

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passed in Claim Case No.12/2005 by the learned Additional Motor Accident Claims Tribunal, Bemetara, Durg. In both the appeals, liability has been fastened over the owner.

3. Briefly stated facts of the case are that the accident took place on 02.05.2004. It was a common case of the claimants that the vehicle bearing No.UP 32 AN 1157, which is owned by R.P.Singh & Company was driven by Trilokinath Saroj, the driver of the vehicle. It was pleaded that at the relevant time, the vehicle was being driven in rash and negligent manner and because of such rash and negligent driving, the driver could not control the vehicle and eventually it turned turtle near village Niruddinpur on a route to Raibareli to Pratapgarh. By impact of such accident Jeevan Dhruw, Saman, Pooja, Pushpa and Mukesh died on the spot. In such vehicle, Indrani Bai, who is the wife of Saman was also traveling and sustained injuries.
4. The Claim Case No.20/2005 was filed by one Sudhawa, Purain Bai being father & mother and Indrani Bai on account of death of Saman, Pooja, Pushpa & Mukesh, who were husband, daughters & son of the claimants respectively. It was the case of the claimants that at the time of accident Pooja, Pushpa & Mukesh were at the age of 5 years, 3 years & 1 year respectively, whereas, Saman was aged about 28 years. The claim was filed by father & mother as also by the wife of deceased Saman namely Indrani Bai. It was further case of the claimants that at the time of accident, the deceased Saman was working as Mason and used to earn Rs.150/- per day. Consequently, for death of Saman as also three minor children, total amount of Rs.10,90,000/- was claimed.
5. The Claim Case No.12/2005 was filed by Kaushal Bai widow of Jeevan Dhruw and two sons namely Motilal & Heeralal on account of death of Jeevan Dhruw. It was pleaded that at the time of accident the deceased Jeevan Dhruw was working as Mason and used to earn Rs.150/- per day.

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Therefore, on the different heads, an amount of Rs.15,10,000/- was claimed by claimants.

6. In respect of the two claim cases, separate reply was filed by the owner & driver of the offending vehicle. They denied the entire averments of the claim petition. In the Claim Case No.20/2005 filed by Sudhwa & Others, it was stated at Para 7 that the deceased alongwith children were going on the vehicle bearing No.UP 32 AN 1157 for the job of the owner of the vehicle itself and at that time the accident happened. In response to such averments, it was denied that the deceased were going on the said vehicle for the work of the owner i.e. the appellant. In Claim Case No.12/2005, it was stated that the deceased Jeevan was traveling on the said vehicle for his own job. The owner & driver of the vehicle in such claim case also denied the entire averments.
7. The learned Claims Tribunal after adjudicating the evidence and pleadings passed an award in both the claim case, however, exonerated the insurance company from payment of the amount by holding that the owner of the vehicle had denied the fact that the deceased were going to perform his job thereby denied to be their employee. It was therefore pleaded that they cannot be held to be the labourer/employee of the owner of the vehicle and exonerated the insurance company.
8. Learned counsel for the appellant would submit that reading of the Claim Case No.20/2005, at Para-7, the claimants have stated that the vehicle belonged to the appellant and the claimants were traveling in such vehicle to perform the job of the owner of the vehicle then at that time, the accident happened. He further submits that the reply would reveal that only this fact was denied that the labourer were traveling to perform the job of the owner, but this fact is not specifically denied that they were the employees of the owner. Consequently, it cannot be held that the appellant has admitted the fact that the claimants were not the employees

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and except that on the particular date they were not going to discharge the job of the owner itself. He therefore submits that the policy which covers the compensation to be paid for the employee, the claimants are entitled to get the amount from the insurance company.

9. Per contra, learned counsel appearing on behalf of the insurance company would submit that in the face of admission made by the driver and owner of the vehicle that on the date of accident, the deceased were not traveling to discharge the job of the owner and was held accordingly, now they cannot plead and submit that the deceased was the employee of the owner of the vehicle. He further submits that, even if, some evidence has come on record, it cannot be considered against the pleadings made. He therefore submits that the order of the Court below is well merited, which do not call for any interference.
10. Learned counsel for the claimants who preferred the cross-objection/ appeal submits that the Court has failed to grant the just compensation and meager amount has been awarded for death of minor children, which requires for consideration and therefore prays to enhance the claim amount. It was further submitted that no future prospects were granted and multiplier is wrongly applied and deduction is also wrongly made, therefore, just compensation be awarded.
11. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.
12. The common question which falls for consideration in these appeals filed by the owner is that whether the Court below has correctly appreciated the pleadings and the evidence to hold the appellant (owner) liable by exonerating the insurance company ?
13. In Claim Case No.20/2005, which is filed by Sudhwa, Purainbai and Indrani Bai for death of Saman and three minor children namely Pooja,

Pushpa and Mukesh, who were aged about 5 years, 3 years and 1 year respectively, at Para-7, it is pleaded that the vehicle bearing No.UP 32 AN 1157, which belonged to the appellant i.e. R.P.Singh & Company, they were traveling alongwith their children to discharge the job of the owner of the vehicle itself and were going to village Bahuchara wherein on the road the accident happened. In reply to such Para-7, the owner & driver of the vehicle i.e. original Non-applicant No.1- Triloki Nath & Non-applicant No.2- R.P.Singh denied the contents of Para-7 wherein it was pleaded that the deceased namely Pooja, Pushpa & Mukesh and the injured Indrani Bai were traveling in such vehicle No.UP 32 AN 1157 to discharge the job of the owner of the vehicle to village-Bahuchara.

14. In this case, this is an admitted fact that the Claim Case No.20/2005 was filed by Sudhwa, Purain Bai and Indrani Bai for four deaths namely Pooja, Pushpa, daughters and Mukesh, son of Indrani Bai, who were aged about 5 years, 3 years and 1 year respectively and for death of Saman, who was the husband of Indrani Bai, the injured. Perusal of Para-7 of reply would reveal that the owner has stated that the minor children, Pooja, Pushpa, Mukesh alongwith their mother Indrani Bai were not traveling to discharge the job of the owner. The reply do not reveal the fact that the deceased Saman was not working under the owner/ appellant, only it is with respect to the minor children and injured mother. Now if the statement of Indrani Bai, AW-1, is examined, she has stated that the owner of the Truck was R.P.Singh and the driver was Trilokinath. It was further stated that at the time of accident, the injured alongwith her husband and three children were traveling along with one Jeevan & Dinesh also. Subsequently, because of the Dumper turned turtle, the husband of Indrani Bai alongwith three

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children were died. In the cross examination, she admits the suggestion that they were the labourer in such vehicle and also admits the suggestion that they were traveling for labour work. In the cross examination by the insurance company, it was volunteered by the witness that they were traveling for job of the contractor, however, the suggestion given to her that they had paid the amount to travel in the Dumper was denied.

15. The driver of the vehicle Trilokinath had proved his license as Ex.D-1 and admits the fact that on the date of accident on 02.05.2004, he was the driver of the Truck bearing No.UP 32 AN 1157. The insurance policy is marked as Ex.D-2. In the cross examination by the claimants, it was admitted that at the relevant time, the Dumper turned turtle whereby the labourers came under it and they died. No further reexamination was made. The document Ex.D-2, which is placed on record purports that the insurance premium was paid for seven employees. The learned Tribunal in its award at Para 13 in Claim Case No.20/2005 and Para 14 in Claim Case No.12/2005 while taking into evidence of both the claim cases, in view of the submission made by the owner & driver of the vehicle, since it was denied by the owner of the vehicle that the deceased was not traveling as labourer of the owner, held that all the deceased were not the labourer of the owner in view of the admission and denial made by the owner of the vehicle.
16. The pleading of the owner, if are examined closely, in Claim Case No.20/2005, the denial is only confined to the deceased namely Pooja, Pushpa, Mukesh and their mother Indrani Bai and is pleaded they were not the labours and with respect to the deceased Saman, it is silent. Even otherwise, the minors namely Pooja, Pushpa & Mukesh, who were aged about 5 years, 3 years and 1 year respectively cannot be

treated to be labourer or employee along with Indrani Bai. But certainly, Saman can be treated to be an employee in view of the evidence which has come on suggestion of the owner & driver of the vehicle. In the statement, it was admitted that all the persons traveling in the vehicle were labourers. Further, the cross examination made by the insurance company with respect to the claimant Indrani Bai, the injured, it is volunteered that the contractor for his job work taking them in the Dumper. She denied the suggestion that at the relevant time, the amount was paid to the driver of the Dumper to travel. Further, the driver of the vehicle Trilokinath in the cross examination admitted the fact that because of the Dumper turned turtle, the labourers who were traveling in such vehicle died.

17. On reading of the pleadings alongwith the evidence, which is on record, in both the claim cases, it reveals that the owner & driver in their written statement though had admitted that the children and wife, the injured, were not labourer but with respect to Saman and other person namely Jeevan can be certainly held to be labourer or employee of the owner/appellant. Further, the insurance policy, which is proved as Ex.D-2 purports that the premium was paid for seven employees. Consequently, in view of the evidence, it is held that the deceased Saman and Jeevan both were employee of R.P.Singh & Company, the owner as such are covered under such policy as employee. In a result, since premium was paid for employee by the owner of vehicle, the insurance company would not be able to get rid of the liability which accrues for death of Saman and Jeevan. While with respect to the other deceased children namely Pooja, Pushpa, Mukesh and injured Indrani Bai, the appellant cannot come out of their admission made in the written statement wherein it is stated that they were not their

employee. Therefore, in a result, the insurance company would be liable to pay the amount of compensation arising out of the death of Saman & Jeevan. While with respect to the deceased children namely Pooja, Pushpa & Mukesh and the injured Indrani Bai, the insurance company would not be liable in terms of the admission made by the owner of the vehicle in their written statement.

18. For the quantum of compensation, cross objections are being considered to adjudicate as to whether the just compensation has been awarded or not ?
19. Now reverting to the quantum of compensation in M.A.No.1402/2005 which arises out of the Claim Case No.20/2005, the learned Tribunal has awarded Rs.50,000/- each for death of three minor children and Rs.1,77,000/- for death of Saman.
20. Initially, the quantum which is awarded for death of Saman is being adjudicated. The claimant Indrani Bai, wife of the deceased Saman, has stated that at the time of accident, Saman was working as Mason and he was aged about 28 years and used to earn Rs.150/- per day.
21. The Tribunal has assessed the yearly income of Saman to Rs.15,000/- per year. Considering the fact that the accident had happened on 02.05.2004 and the notional income as was prescribed in Second Schedule as provided in Sub-Section (3) of Section 163-A of the Act has fixed notional income for period of 1994 to the extent of Rs.15,000/-. As the Central Government has failed to amend the Second Schedule as provided in Sub-Section (3) of Section 163-A of the Act, the Courts/Tribunals can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the Second Schedule in the year 1994 and the date of accident in the given case. Therefore, if the hike in price of

essential commodities and cost of living during the period of 1994 to 2004 are taken into consideration the notional income in the opinion of this Court, would certainly come to Rs.36,000/- per annum i.e. Rs.3,000/- per month.

22. Admittedly, the deceased was self employed person and no future prospects has been added in the income, therefore, the aspect of further prospects cannot be denied taking into age of the deceased as 28 years. Therefore, as per the law laid down in case of **Rajesh & Others v. Rajbir Singh & Others** reported in (2013) 9 SCC 54, it would be just and proper to add future prospects of 30% over the notional income. The claimants in this case were father, mother & wife of the deceased, therefore, the deduction would be 1/3, as the dependents are numbering into three. The age of the deceased was 28 years, which has not been disputed and therefore the multiplier of 17 would be applicable, as per the law laid down in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another**, reported in (2009) 6 SCC 121.

23. The learned Tribunal has awarded Rs.5,000/- for loss of consortium to the wife, which appears to be too meager considering the age of wife and accordingly it would be just and proper taking into the age of the deceased and the age of the widow, an amount of Rs.50,000/- is awarded for loss of consortium. No amount has been awarded to the mother & father who were dependents on the deceased, therefore, another amount of Rs.50,000/- is awarded for love & affection and care of the mother & father. For funeral expenses, an amount of Rs.2,000 is granted, which I deem it proper to grant an amount of Rs.15,000/-. Therefore, the amount of compensation is reassessed as under :

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S.No	Heads	Calculation
(i)	Notional income.	Rs.36,000/- per year
(ii)	30% of (i) above to be added as future prospects.	(36,000 + 10,800) Rs. 46,800/-
(iii)	1/3 th of (ii) deducted as personal expenses of the deceased.	(46,800 – 15,600) Rs. 31,200/-
(iv)	Compensation after multiplier of 17 is applied.	(Rs.31,200 x 17) Rs. 5,30,400/-
(v)	For loss of consortium to wife.	Rs. 50,000/-
(vi)	For love & affection and care to mother & father.	Rs. 50,000/-
(vii)	For funeral expenses.	Rs. 15,000/-
	Total compensation awarded	Rs. 6,45,400/-

24. The insurance company shall be liable to make good such amount. The liability will be jointly and severally that of the appellant and the insurance company. The insurance company shall be primarily liable to discharge the liability.
25. Now while deciding the quantum of compensation of Rs.1,50,000/- for cause of death of minor children namely Pooja, Pushpa & Mukesh and the compensation awarded to the injured Indrani Bai, the same is reassessed and adjudicated as under.
26. The Hon'ble Supreme Court in case of *Mallikarjun v National Insurance Co. Ltd.* reported in (2014) 14 SCC 396 and in case of *Kumari Kiran v. Sajjan Singh & Others*, reported in (2015) 1 SCC 539 had occasion to deal with the compensation payable to the minor. In both the cases, the Hon'ble Supreme Court reiterated the view adopted in case of *Mallikarjun* (supra) and further laid down that a child's notional income cannot be ascertained as per the figure given for non-earning individuals in the Second Schedule of the Motor

Vehicles Act, 1988. Therefore, the question of notional income cannot be considered for a child of non-earning. In case of *Kumari Kiran* (supra) their Lordship has dealt with the payment of compensation to the minor as against their disability, but in the instant case, admittedly three child have died.

27. In cases of death of child, the Supreme Court has considered in case of *Puttamma & Others v. K.L.Narayana Reddy & Another* reported in (2013) 15 SCC 45 and in para 55 has observed the intention of legislature, which was reproduced here as under :

"55. A Letter dated 5-12-2012 issued by the Joint Secretary, Ministry of Road Transport and Highways, New Delhi has been brought to our notice by Mr.P.P.Malhotra. Giving reference to the present case therein, the officer has informed that the Motor Vehicles (Amendment) Bill, 2012, inter alia, to amend Section 163-A of the Motor Vehicles Act, 1988 was passed by the Rajya Sabha on 8-5-2012. The said Bill proposes to substitute Section 163-A(3) of the Act by empowering the Central Government to revise the amount or the multiplier specified in the Second Schedule after every three years and furthermore, the Bill also seeks to substitute the Second Schedule so as to provide that for death of non-earning persons, a fixed compensation of Rs.1,00,000 for children up to 5 years of age and Rs. 1,50,000 for persons more than 5 years of age. It is informed that though the Bill has been passed by the Rajya Sabha it is still pending consideration before the Lok Sabha for its approval.

28. Thereafter, while considering such intention of legislature the Court at para 58 has held that the children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/- and persons more than

5 years of age Rs.1,50,000/- shall be entitled till the M.V.Act is amended. Para 58 of the said order is reproduced herein 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 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."

29. Consequently, while following the dictum of the principles laid down by their Lordship in case of **Puttamma & Others** (supra), it is held that the claimant shall be entitled for Rs.1,00,000/- for death of each children as they were below 5 years of age. Furthermore, the Tribunal has not awarded any amount of compensation to the victim, the injured. Taking into account the document which are filed along-with the Claim Case No.20/2005 wherein it is shown that the accident had occurred of the victim also who traveling in the ill-fated vehicle and was admitted to the

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Hospital. Therefore, on account of pain and agony, an amount of Rs.15,000/- to the claimant Indrani Bai is awarded. Therefore, the compensation is reassessed as under :

S.No.	Heads	Calculation
(i)	For death of three children, Rs.1,00,000/- each.	Rs. 3,00,000/-
(ii)	For pain and suffering to the claimant Indrani Bai.	Rs. 15,000/-
	Total	Rs. 3,15,000/-

30. The aforesaid compensation shall be payable by the owner R.P.Singh & Company along with the driver and their liability shall be joint and several. The insurance company shall not be liable to pay the said amount of Rs.3,15,000/- and they are exonerated to pay such compensation.

31. Thus, the total compensation is recomputed as Rs. 6,45,400 + 3,15,000 = Rs.9,60,400/- After deducting Rs.3,27,000/- as awarded by the tribunal, the enhancement would be Rs. 6,33,400/-. Out of which, the quantified amount of compensation which was granted to Rs.1,77,000/- for death of Saman is enhanced to Rs.6,45,400/- for which the insurance company will be liable to make good the payment. Whereas, the amount awarded for the death of three minor children and injured/claimant, the earlier awarded amount i.e. Rs.1,50,000/- is enhanced to Rs. 3,15,000/- for which the owner/appellant will be liable for payment. The enhanced amount will carry interest @ 9% from the date of filing of the petition till its realization.

32. Now reverting to the other case i.e. M.A.(C) No.1403/2005, the cross objection/appeal is preferred by the claimants Kaushal Bai, widow of the deceased Jeevan and two sons namely Motilal & Hiralal. The Tribunal has assessed the yearly income of Jeevan Dhruw to

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Rs.15,000/- per year. The notional income as was prescribed in Second Schedule as provided in Sub-Section (3) of Section 163-A of the Act has fixed notional income for period of 1994 to the extent of Rs.15,000/-.

33. As the Central Government has failed to amend the Second Schedule as provided in Sub-Section (3) of Section 163-A of the Act, the Courts/Tribunals can take judicial notice of increase in the prices of essential commodities and the cost of living during the period between the introduction of the Second Schedule in the year 1994 and the date of accident in the given case. Therefore, if the hike in price of essential commodities and cost of living during the period of 1994 to 2004 are taken into consideration the notional income in the opinion of this Court, would certainly come to Rs.36,000/- per annum i.e. Rs.3,000/- per month.
34. For the quantum of compensation, cross appeal is being considered to adjudicate as to whether the just compensation has been awarded or not ? Admittedly, the deceased was self employed person and no future prospects has been added in the income, therefore, the aspect of further prospects cannot be denied taking into age of the deceased as 38 years as per the post mortem report Ex.P-3. Therefore, as per the law laid down in case of **Rajesh & Others v. Rajbir Singh & Others** reported in **(2013) 9 SCC 54**, it would be just and proper to add future prospects of 30% over the notional income. The claimants in this case were widow and two sons of the deceased, therefore, the deduction would be 1/3, as the dependents are numbering into three. The age of the deceased was 38 years, which has not been disputed and therefore the multiplier of 15 would be applicable, as per the law laid down in case of

Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121.

35. The learned Tribunal has awarded Rs.5,000/- towards loss of consortium to the wife and Rs.2,000/- for funeral expenses and nothing has been awarded for love and affection and care & guidance for children. The said compensation in the considered opinion of this Court requires reconsideration. Therefore, taking into account the age of the deceased and the claimant- wife, she is shown to be 33 years of age, it would be just and proper to grant an amount of Rs.50,000/- for loss of consortium. Further for love & affection and care & guidance to the minor children, an amount of Rs. 50,000/- is awarded and for funeral expenses, an amount of Rs.15,000/- is granted. Therefore, the amount of compensation is reassessed as under :

S.No	Heads	Calculation
(i)	Notional income.	Rs.36,000/- per year
(ii)	30% of (i) above to be added as future prospects.	(36,000 + 10,800) Rs. 46,800/-
(iii)	1/3 th of (ii) deducted as personal expenses of the deceased.	(46,800 – 15,600) Rs. 31,200/-
(iv)	Compensation after multiplier of 15 is applied.	(Rs.31,200 x 15) Rs. 4,68,000/-
(v)	For loss of consortium to wife.	Rs. 50,000/-
(vi)	For love & affection and care to minor children.	Rs. 50,000/-
(vii)	For funeral expenses.	Rs. 15,000/-
	Total compensation awarded	Rs. 5,83,000/-

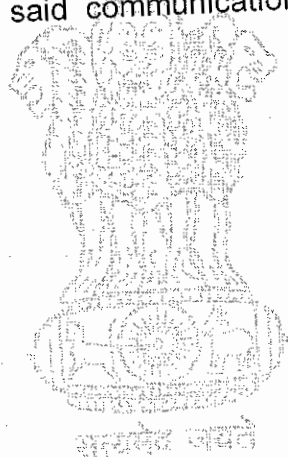
36. Thus, the total compensation is recomputed as Rs. 5,83,000/-. After deducting Rs.1,67,000/- as awarded by the tribunal, the enhancement would be Rs.4,16,000/-. The claimants will be entitled to Rs.4,16,000/-

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in addition what is already awarded. The enhanced amount will carry interest @ 9% from the date of filing of the petition till its realization.

37. The insurance company shall be liable to make good such amount. The liability will be jointly and severally that of the appellant and the insurance company. The insurance company shall be primarily liable to discharge the liability.
38. In the result, both the appeals are allowed to the above extent. No order as to costs.
39. The Registry is further directed to communicate the claimants in writing the "amount enhanced in this appeal" as against the award made by the Tribunal below. The said communication be made in Hindi Deonagari language.

Ashok



Sd/-
Goutam Bhaduri
Judge