

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 448 of 2017**

- Smt. Jamuna Bai W/o Late Shri Dular Singh, Aged About 33 Years R/o Village Aanchhidadar, Tahsil Katghora, District Korba, Chhattisgarh, Chhattisgarh
- Ratni Kumar S/o Late Shri Dular Singh, Aged About 12 Years Minor Through Natural Legal Guardian Mother Namely Smt. Jamuna Bai W/o Late Shri Dular Singh, Aged About 33 Years, R/o Village Aanchhidadar, Tahsil Katghora, District Korba, Chhattisgarh

All are R/o Village Aanchhidadar, Tahsil Katghora, District Korba, Chhattisgarh

---- Appellants**Versus**

- Shiv Prasad Kanwar S/o Mahraj Singh Kanwar, Aged About 28 Years R/o Village Aanchhidadar, Tahsil Katghora, District Korba, Chhattisgarh

Driver Of Offending Vehicle Pickup Bearing Registration No.C.G.12 S-1708

- Mukesh Kumar Agrawal S/o Ramkishan Agrawal, R/o Malinebhata, Katghora, Tahsil Katghora, District Korba, Chhattisgarh

Owner Of Offending Vehicle Pickup Bearing Registration No.C.G.12 S-1708

- Megma H.D.I. General Insurance Company Ltd. Megma House, 24 Park Gali, Kolkata 700016 Branch Office 102, Indira Commercial Complex Hotel Behind Of Hotel Natraj T.P.Nagar Korba, Tahsil And District Korba, Chhattisgarh

Insurer Of Offending Vehicle Pickup Bearing Registration No.C.G.12 S-1708

---- Respondents

(Cause-file taken from the Case Information System)

For Appellants	:	Mr. Pushpendra Kumar Patel, Advocate
For Respondent No.3	:	Mr. Arvind Panda, Advocate appears on behalf of Mr. Ghanshyam Patel, Advocate

Hon'ble Shri Justice Arvind Kumar Verma
Order on Board

29.02.2024

1. Claimants-appellants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') for enhancement of the award, challenging the impugned award dated 15.11.2016 passed by the Motor Accident Claims Tribunal, Korba, District Korba (C.G.) in Motor Accident Claim Case No. 28/2015, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, calculated total compensation of Rs.2,60,000/- on account of death of Surendra Kumar/ deceased.
2. Facts relevant for disposal of this appeal are that on 11/01/2015, in the afternoon in village Anchikchar, near the hand pump, pickup no. C.G. 12 S/ 1708 was washed and carelessly parked on a sloping road by Respondent no. 1/ driver of the offending vehicle pickup. Surendra Kumar was just standing behind the pickup. Due to negligent parking of the pick up by Respondent No. 1 the pickup rolled backwards where the deceased was standing. As a consequence deceased/ Surendra Kumar received fatal injuries and unfortunately died on the spot itself. FIR was lodged about the alleged offence at the Police Station against Respondent No. 1/ Driver of the offending vehicle pickup. Respondent No. 2 was the owner of the offending vehicle pickup and Respondent no. 3 was the insurer of the offending vehicle pickup.
3. Appellants have filed an application under Section 166 of the Act of 1988 seeking total compensation to the tune of **Rs.18,00,000/-** pleading therein that on the date of accident, deceased was 14 years of age, earning Rs.5,000/- per month working as a 'labourer'. They were dependent upon the income of deceased/Surendra Kumar.
4. Respondents No. 1 and 2 have filed their written statement in which they have completely refuted the pleadings of the appellants and

stated that the appellants have unnecessarily exaggerated the happenings of the incident against Respondent No. 2 and 3. Respondents 1 and 2 have stated that the deceased was a minor at the time of incident, his mother and brother were not dependents on the income of the deceased rather he was dependent upon them. That the incident did not occurred due to the negligence of the offending vehicle pickup in fact the deceased died after falling on the stone placed near his standing position. Further at the time of accident the driver of the offending vehicle pickup was having an effective valid license, hence pleads to cancel the application forthwith on the bases of these grounds. Even after this if any damages arises out of the said accident it should be fastened on Respondent no. 3 the insurer of the vehicle pickup.

5. Respondent No. 3/ Insurance Company has also submitted its written statement in which it has stated that the appellants has made false plea without any basis. At the time of incident Respondent No. 1/ driver of the vehicle pickup was not having a valid and effective license to drive. Also passengers were transported by charging fees from the pickup which is against the insurance policy hence, there is a violation of the terms and conditions of the insurance policy. On the basis of these grounds Respondent No. 3 is not liable to pay any amount of compensation. Further all the legal representatives of the deceased have not been made a party and the accident occurred due to the negligence of the deceased. In such situations appellants are not entitled to get any compensation. Also the deceased was not earning anything in fact he was dependent on his mother. Therefore, the application needs to be summarily rejected.
6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Surendra Kumar/deceased died on account of rash and negligent parking of the driver/Respondent No. 1 due to which he sustained grievous injuries and as a consequence he died on the spot. Accordingly, Tribunal allowed application in part,

awarded Rs.2,60,000/- with interest @ 8% *per annum*, fastened liability upon Respondents No. 1 and 2. Respondent No. 3/ Insurance Company is exonerated as there is a breach of policy.

7. Learned Counsel appearing for the Appellants, stated that the award passed by the learned Tribunal holds the material illegality, perversity and irregularity, which is bad in the eyes of law. That the Tribunal has wrongly assessed the income, multiplier, deduction, future loss of income and the rate of interest of the deceased in its award. That the Tribunal has not awarded proper compensation towards the other conventional heads. Tribunal has wrongly exonerated the insurance company from the payment of compensation amount.
8. Learned counsel appearing for the respondent No.3/Insurance Company supported the award and submits that the compensation has rightly been awarded and does not require any interference by this Court. The learned tribunal has rightly exonerated the insurance company and has applied the principle of pay and recover.
9. I have heard learned counsel for the parties at length, considered their rival submissions and perused the records with utmost circumspection.
10. As regards the income of the deceased, though the claimants have pleaded in the claim petition that deceased was labourer and earning Rs. 5,000/- per month, but no documentary authentic evidence in support thereof has been adduced by the appellants to substantiate the said fact. However, the Tribunal stated that as per Section 163(a) of the Second Schedule of the Motor Vehicles Act, the notional income of a person in one year has been recognized as Rs. 15,000/-, but the said Act was of 1994. Looking to the severity of this case Tribunal has held that it would be justified to accept the imaginary income of Rs. 30,000/-annually in the current inflationary period. The Hon'ble Supreme Court in the matter of **Gokul & Ors Vs Dhukhram & Anr. 2017 SCC Online Chh 1543** has held that the income of the minor deceased should be Rs. 30,000/- per annum. Therefore, this Court

after perusing the available record and in the light of Gokul & Ors case(supra) has clearly opined that the assessment made by the Tribunal in respect of the income of the deceased is just and proper.

11. So far as future prospects is concerned, the Tribunal considering the pleadings, evidence, oral and documentary, available on record, determined the age of the deceased was 14 years, has not granted anything in respect of future prospects. The Hon'ble Supreme Court in the matter of **Gokul & Ors Vs Dhukhram & Anr. 2017 SCC Online Chh 1543** has considered no loss of future prospects for the person who are minor. Therefore in the present case also this Court finds that there is no need of adding future prospect to the income of the deceased.
12. As regard the deduction for personal and living expenses is concerned learned Claims Tribunal has deducted 50% i.e. $\frac{1}{2}$ from the income of the deceased. Whereas there should be no deduction in terms of personal and living expenses when the person is minor. And in the present case also the deceased was minor therefore, there should be no deduction in terms of personal or living expenses. Hence proper re computation is required under this head as tribunal has deducted 50% from the income of the deceased which is a grave error in the eyes of law.
13. As far as the multiplicand is concerned, learned Tribunal has applied the multiplier of 15. The Hon'ble Court in the matter of **Gokul & Ors Vs Dhukhram & Anr. 2017 SCC Online Chh 1543** has considered a multiplier of 15 for the person who are minor. Therefore, this court has opined that Tribunal has rightly applied the multiplier of 15 . Hence, in the present case looking to the age of the deceased this Court is of the opinion that there is no need of recomputing the multiplier as it is just and proper looking to the age of the deceased which was 14 years at the time of incident.

14. Under the consortium head Tribunal has awarded Rs. 10,000/- each to the mother and brother of the deceased towards the loss of love and affection. This court finds its correct and states that there is no further modification and enhancement required under this head.
15. Further , as per the law laid down by the Supreme Court, in the matter of **National Insurance Co. Ltd. Vs Pranay Sethi(2017) 16 SCC 680**, the appellants are also entitled to be awarded a sum of Rs. 15,000/- towards funeral expenses and Rs. 15,000/- towards the loss of estate. In the present case Tribunal has awarded only Rs. 15000/- towards the funeral expenses and no amount towards the loss of estate. But in the opinion of this Court these amounts are not appropriate and needs to be modified. Therefore, the appellants are entitled to get Rs. 15,000/- each under the head of loss of estate and funeral expenses.
16. Considering the facts and circumstance of the case, material available on record and in the light of judgment passed by the Hon'ble Supreme Court in the matter of **National Insurance Co. Ltd Vs. Pranay Sethi & others and Gokul & Ors Vs Dhukhram And Anr.**, this Court is recomputing the compensation as below:-

Sr. No.	Particular	Awarded by the Court
1.	Annual income of the deceased	Rs. 30,000/-
2.	Multiplier of 15 applied to assess total loss of dependency	Rs.30,000/- x 15= Rs. 4,50,000/-
3.	Loss of Love and Affection to appellants 1 and 2	Rs. 10,000/- x 2 = Rs. 20,000/-
4.	Funeral Expenses	Rs. 15,000/-
5.	Loss of estate	Rs.15,000/-
6.	Total compensation	Rs.5,00,000/-

17. For the forgoing reasons, the appeal is allowed in part. The amount of compensation of Rs.2,60,000/- awarded by the tribunal is enhanced to **Rs. 5,00,000/-**. Hence, after deducting the amount of Rs. 2,60,000/-, the appellants/claimants are held entitled for an additional amount of Rs.2,40,000/-. The Insurance Company is directed to deposit the amount of compensation as enhanced by this Court within a period of 60 days from the date of receipt of copy of this order. The additional amount of compensation shall carry interest @ 6% *per annum* from the date of filing of claim application before the Tribunal, till its realization. Rest of the conditions of impugned award shall remain intact.
18. In the result, appeal is allowed in part and the impugned award modified to the extent as indicated herein-above. The insurance company shall pay the compensation awarded to the appellants first and thereafter as per the doctrine of pay and recover, shall recover the same from the Respondent no. 1/ driver and Respondent no.2/owner of the involved vehicle pickup.

SD/-

(Arvind Kumar Verma)

Judge