

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 705 of 2018**

1. Rajesh Nayak S/o Manehswar Nayak, Aged About 31 Years R/o Village Lodhma, Tahsil Kunkuri, District Jashpur Chhattisgarh
2. Smt. Bhagwati Nayak W/o Rajesh Nayak, Aged About 30 Years R/o Village Lodhma, Tahsil Kunkuri, District Jashpur Chhattisgarh. ....(Claimants)

**---- Appellants****Versus**

1. Dhan Bhusan Topppo S/o Josef Topppo, R/o Village Manjhatoli, Birkera, Raidih, Post Raidih, District Gumla Jharkhand. ....(Owner)
2. Iffco Tokio General Insurance Co. Ltd., Local Branch Officer, Beside Sunday Market, Nayaganj, Raigarh Chhattisgarh. 492001. ....(Insurer Of Motor Cycle Bearing No. Jh 01 Bq 7693)
3. Sangeeta Nayak, S/o Late Kishore Nayak, House No. 155, Village Lodham, Tahsil And District Jashpur Chhattisgarh
4. The Oriental Insurance Company Limited, Local Branch Officer, Raigarh Chhattisgarh. ....(Insurer Of Motor Cycle No. CG 14 MI 0176)

**---- Respondents**


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| For Appellant       | : | Ms. Simran Kaur, Advocate on behalf of Shri A.K.Prasad, Advocate     |
| For Respondent No.2 | : | Shri Pravesh Sahu, Advocate on behalf of Shri P.R.Patankar, Advocate |

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**Hon'ble Shri Justice Sachin Singh Rajput****Order On Board****31/01/2024**

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'M.V.Act') has been filed against award dated 23/01/2018 passed by the Motor Accident Claims Tribunal, Jashpur (CG) in Motor Accident Claim No.02/2017.
2. By the impugned award, learned Tribunal has awarded Rs.2,85,000/- in favour of the claimants as compensation on account of death of their daughter Nandini Nayak in an unfortunate accident that took place on

02/02/2016 by rash and negligent driving of the offending vehicle (Motor Cycle) bearing registration No.JH-01-BQ-7693 by which was owned by respondent No.1/ owner and insured with respondent No.2 / insurance company. The driver of the offending vehicle also died in the accident.

3. As per claim application, the deceased Nandini Nayak was aged about 08 years and she would have definitely succeeded in her life and would have contributed to the livelihood of her parents/claimants. Therefore, Rs.15,25,000/- was claimed. Respondent No.1 / owner remained ex-parte before the Tribunal. Respondent No.2/ insurer of the offending vehicle stated that the offending vehicle was not insured with them and the said vehicle was being driven in violation of the insurance policy. Respondent no.3 also resisted the claim application.
4. Learned Tribunal after framing issues, decided those issues in favour of the appellants / claimants and awarded compensation as stated above.
5. Learned counsel for the appellants / claimants submits that the law with regard to death of a child is no longer res integra in view of the judgment of Hon'ble Supreme Court in the case of **Kishan Gopal and anr. v. Lala and ors., (2014) 1 SCC 244** and **Kurvan Ansari @ Kurvan Ali and anr. v. Shyam Kishore Murmu and anr., (2022) 1 SCC 317**. She submits that apart from this, the amount of compensation on other heads is also on the lower side.
6. Learned counsel for respondent No.2 supports the award passed by the learned Tribunal and submits that looking to the facts and circumstances of the case, just compensation has been awarded.
7. I have heard learned counsel for the parties, considered their rival submissions and perused the records.
8. In the light of judgments passed in the case of Kurvan Ansari (supra) and Kishan Gopal (supra), this Court feels that ends of justice would be served by awarding Rs.5 lakhs to the appellants / claimants.
9. Accordingly, the appeal is partly allowed and amount of Rs.5 lakhs is awarded to the appellants / claimants. After deducting Rs.2,85,000/- as awarded by learned Tribunal, enhancement comes to **Rs.2,15,000/-**.

Respondent No.2/ insurance company shall pay the amount of Rs.2,15,000/- within a period of 60 days with 6% interest from the date of claim application. After the amount of compensation is deposited by respondent No.2/insurance company, learned Tribunal shall pass appropriate order for apportionment, investment and disbursement.

10.The appeal thus partly allowed.

Sd/-

**(Sachin Singh Rajput )**  
**Judge**