NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 247 of 2011

1. Smt. Renu Vishnoi, W/o. Late Shri Narendra Vishnoi, Aged about 36 years.
2. Shailendra Vishnoi, S/o. Late Shri Narendra Vishnoi, Aged about 17 years.
3. Suraj Vishnoi S/o. Late Shri Narendra Vishnoi, Aged about 15 years.

Appellant No.2 & 3 through her legal guardian Appellant No.1, mother.

All R/o. C/o. Shri K.L. Vishnoi, Jal Vihar Colony, Raipur Tah. & Distt. Raipur (C.G.).

---- Petitioner

Versus

1. Sammat Lal Satnami, Aged about 25 years, S/o. Shri L.L.Satnami, R/o. Village Khamaria, Thana- Bhatapara (Gramin), Tah. Bhatapara, Distt. Raipur (C.G.).
2. Smt. Tineshweri Baghel, Aged about 45 years, W/o. Nand Das Baghel, R/o. New Ganj Ward, Bhatapara, Tah. Bhatapara Distt. Raipur (C.G.).
3. The New India Assurance Company Ltd. Through its Manager, Branch Office at Shantikunj, Civil Lines, Baloda Bazar, Distt. Raipur (C.G.).

---- Respondent

For Appellant	:	Yogesh Pandey, Advocate.
For Respondent No.3	:	Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

01/07/2015

1. This is an appeal against the award dated 18.02.2010 passed in Claim Case No.66/2009 by the Court of Tenth Additional Motor Accident Claims Tribunal, Raipur.

2. The brief facts of the case are that the claim case was filed by wife and two minor children of the deceased namely Narendra Kumar Vishnoi. On the date of accident 02.01.2009, Narendra Kumar, the

deceased, was going along with one person namely Dilip Kumar Soni as pillion rider and was coming back to Bhatapara after getting the Railway reservation. When they reached near Arihant Rice Mill, at that time, the Bus bearing No.CG 04 E 0471 being driven by Sammat Lal Satnami and owned by Smt. Tineshwari Baghel in rash and negligent manner dashed the motorcycle from behind whereby the pillion rider Dilip Kumar fell apart whereas the deceased Narendra Kumar alongwith the motorcycle was dragged in front of the Bus and sustained severe injuries and eventually he died. It was pleaded that at the time of accident, the deceased was a hale and hearty of 38 years of age and was working in a Rice Mill named as Jagdamba Rice Mill, Pangaon, Baloda Bazar as Munsi and was getting a salary of Rs.7,000/- per month. Therefore, on the different heads an amount of Rs.18,36,000/- was claimed.

3. The Owner and Driver of the offending vehicle i.e. the original Non-applicant No.1 & 2 denied the averments of the petition and contended that at the relevant time, the vehicle was not driven in rash and negligent manner. It was further contended that at the time of accident, the vehicle was insured with the New India Assurance Company, therefore, the liability to make good the amount is on the insurance company.

4. The Insurance Company, Non-applicant No.3, contended that the accident had occurred due to the rash and negligent driving of the motorcycle itself and the claimant has not come to the Court with the clean hands, therefore, the insurance company be exonerated from the payment of liability.

5. The learned Claims Tribunal after evaluating the facts and evidence had passed an award of Rs.4,01,000/- in favour of the claimants.

6. Learned counsel appearing on behalf of the claimants would submit that without any reason or evidence on record, the Tribunal has held that the deceased was liable for contributory negligent for the accident. He further submits that no evidence was adduced by the driver or owner or the insurance company, therefore, in absence of any evidence, the Tribunal itself fell into error by assessment of Ex.A-6, the map and came to a wrong finding of fact. He further submits that even the reading of Ex.A-6 would go to show the nature of accident how it happened and it is relevant to see the direction shown in such map. He further placed a reliance of (2012) 2 SCC 356 that even the theory of contributory negligence is advanced then in such case onus of proof of contributory negligence lies on shoulders of defence (owner and insurer). Therefore, in absence of any evidence, the contributory negligence cannot be presumed. He further submits that for the quantum of compensation, despite the evidence on record, the Tribunal has wrongly assessed the income and therefore the wrong finding which deprived the appellants to get the just compensation and prays for enhancement of the award.

7. Learned counsel appearing for the insurance company submits that though the Court has held the contributory negligence to the extent of 50%, but while making the apportionment of the award, the same has not been considered, therefore, an error on the face of the award existed for which a separate review petition is filed before the trial Court, which is still pending. He further submits that the statement of the eye-witness, if is examined, it would go to show that the deceased was on the wrong side of the road, which eventually caused the accident and there was a head on collision; consequently the contributory negligence as has been held by the Court below is well

merited. He further submits that the award do not call for any interference and the appeal is liable to be dismissed.

8. I have heard the learned counsel appearing for the parties at length, perused the pleadings and documents on record.

9. The primary question which falls as to whether the deceased cannot be held liable for the contributory negligence. In order to ascertain the finding, the evidence of Dilip Kumar Soni who was the pillion rider along with the deceased becomes relevant. Perusal of the statement would show that it is stated that on 02.01.2009 while they were coming back from Bhatapara to Baloda Bazar, they were dashed from behind by the Bus bearing No.CG 04 E 0471 whereby he fell apart and the deceased was dragged alongwith the motorcycle to 15 to 20 feet. In the cross examination, he was confronted with the FIR wherein he affirmed the same that after causing dash, the deceased was dragged alongwith the motorcycle to 20 feet on the left side. He also affirmed the facts which were narrated in the FIR. Reading of the FIR which is marked as Ex.A-2 shows that it was stated that the accident had occurred from front and the motorcycle was dragged to 20 feet. Close reading of the FIR do not go to show that it was a head on collision, therefore, the submission as has been made do not find any support from the FIR.

10. Further, the facts are corroborated by Ex.A-6 which shows two direction i.e. Bhatapara & Baloda Bazar. According to the eye-witness and pillion rider, he alongwith the deceased were coming from Bhatapara to Baloda Bazar and he was dashed at the spot 'A' which shows at the right side of the road and further it dragged towards Baloda Bazar and towards left. The place where the body of the deceased was found alongwith the Bus is shown as 'B'. Therefore,

since it was dashed by the Bus, it can be very well presumed that the Bus was also coming from Bhatapara to Baloda Bazar and after dash, it further travelled towards Baloda Bazar and went to the left side and dragged to 20 feet and stopped at the left after the road. It cannot be accepted that by the dash of the motorcycle the Bus would have changed its direction and from Baloda Bazar it would turn around to Bhatapara. Consequently, the statement of the eye-witness reading it alongwith FIR and the Ex.A-6, the spot map, supports the contention of the appellants and the witness. So after careful examination of evidence on record, in the opinion of this Court, the Tribunal fell into error in interpreting Ex.A-6 and therefore has wrongly held the contributory negligence of the deceased. Furthermore, the finding is further fortified by the fact that there is no evidence adduced either by the owner or the driver or the insurance company. As has been laid down by their Lordship in case of ***National Insurance Company Limited v. Sinitha & Others,*** reported in ***(2012) 2 SCC 356.*** In case when theory of contributory negligence is raised then the onus of proof of contributory negligence lies on the shoulder of defence. Therefore, in the instant case applying the aforesaid principle since no evidence was adduced either by the insurance company or the owner & driver, the presumption of contributory negligence cannot be accepted. In the result, the finding of contributory negligence of 50% on the part of deceased cannot be substantiated and thereby is set aside.

11. For the foregoing reasons, I am of the opinion that the finding of contributory negligence as has been held by the learned Tribunal cannot be sustained and accordingly the same is set aside.

12. Now coming to the question of quantum, the Tribunal has assessed the income of the deceased as Rs.3,000/- per month. The wife of the

deceased PW-2 has stated that her husband was earning Rs.7,000/- per month and was working at Jagdamba Rice Mill as Munsi. The Partner of Jagdamba Rice Mill namely Amit Gupta is examined as AW-3. He has stated that initially when the firm started they used to pay Rs.5,000/- per month to the deceased and thereafter from the month of October, it is enhanced from Rs.5,000/- to Rs.7,000/-. He has produced the salary ledger as Ex.A-16, salary voucher as Ex.A-17 & A-18 and attendance Register as Ex.A-19 & A-20. The learned Tribunal has disbelieved Ex.A-19 on the ground that there has been some interpolation made with respect to the salary wherein the salary is shown to be Rs.7,000/-.

13. Perusal of Ex.A-19(c) also shows that in respect of salary of Narendra Kumar some overwriting has been made in the amount of Rs.7,000/-. Now if the salary slip Ex.A-17 & attendance Register Ex.A-19 is seen, it shows that the salary was paid to Rs.6,300/- in the month of November to the deceased, which bears the signature of the deceased, which has not been disputed. Ex.A-17 shows that the salary of Rs.6,300/- is dated 30.11.2008 and the salary slip dated 31.12.2008 Ex.A-18 shows the salary to Rs.7,000/-. The cross examination affected to this witness. The salary voucher has not been seriously questioned though the attendance Register has been subject to cross examine leaving apart the salary slips. Consequently, reading it with the statement of the PW-3, in the opinion of this Court, the salary of Rs.6,300/- which is shown in Ex.A-17 which is not in dispute or do not contradict the amount shown even in Ex.A-19(c), the salary of the deceased could have been held to be Rs.6,300/- at the time of accident and it is accordingly assessed that at the time of accident the salary of deceased was Rs.6,300/-.

14. As per the post mortem report, the deceased was aged about 36 years and was a person with the fixed salary, as such, applying the principle and law laid down in case of ***Rajesh and others Vs. Rajbir Singh and others*** reported in ***(2013) 9 SCC 54,*** 50% is added as future prospect in the salary, which comes to Rs.1,13,400/- (6,300 + 3,150 = 9,450 x 12 = 1,13,400/-). Therefore, the annual salary with future prospect is calculated to Rs. 1,13,400/-.

15. The income tax as was leviable in the year 2009-2010 was that is upto Rs.1,50,000/- the income tax was exempted; consequently, no tax would be leviable and would fall for deduction. The deceased survived by wife and two children and therefore 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,*** 1/3 would be deducted from the annual income of the deceased, which comes to Rs. 75,600/- (1,13,400 – 37,800/- = 75,600). The age of the deceased was 36 years, therefore, the multiplier of 15 would be applicable.

16. The Tribunal has awarded Rs.15,000/- for loss of consortium to the wife, which appears to be too meager taking into the age of the wife, which is shown to be 36 years at the time of accident; therefore, the amount is enhanced to Rs.1,00,000/-. Further, the tribunal has awarded Rs.2,000/- for funeral expenses, which is enhanced to Rs.25,000/-. The Tribunal has not given any amount under the head i.e. for loss of estate and for love & affection to the minor children, therefore, an amount of Rs.50,000/- is awarded for love & affection to the minor children and Rs.25,000/- is awarded for loss of estate. Thus, the award of compensation is recomputed as under :

S.No	**Heads**	**Calculation**
(i)	Salary	(Rs.6,300 x 12)

		Rs.75,600/- per year
(ii)	50% of (i) above to be added as future prospects	(75,600 + 37,800) Rs.1,13,400/-
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased.	(1,13,400 – 37,800) Rs.75,600/-
(iv)	Compensation after multiplier of 15 is applied.	(Rs.75,600 x 15) Rs.11,34,000/-
(v)	Loss of consortium to the wife.	Rs. 1,00,000/-
(vi)	Loss of love & affection to the minor children.	Rs. 50,000/-
(vii)	Loss of estate.	Rs. 25,000/-
(viii)	Funeral expenses	Rs. 25,000/-
	Total compensation awarded	**Rs. 13,34,000/-**

17. Thus, the total compensation is recomputed as Rs. 13,34,000/-. After deducting Rs.4,01,000/- as awarded by the tribunal, the enhancement would be Rs. 9,33,000/-. The claimants will be entitled to Rs.9,33,000/- in addition what is already awarded. The enhanced amount will carry interest @ 9% from the date of enhancement of the award till its realization. In the result, the appeal filed by the claimants is allowed to the above extent. There will be no deduction on the head of contributory negligence as has been held in the foregoing paras.

18. The Registry is further directed to communicate the claimants in writing "the enhanced amount" in this appeal as against the award made by the tribunal below. The said communication be made in Hindi Deonagari language.

Sd/-

(**Goutam Bhaduri**)

JUDGE

Ashok