NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 63 of 2012

1. Smt. Shanti Vishwakarma, aged about-43 years; wife of Late Ramdeen Vishwakarma; (Wife)

2. Ku.Madhu Vishwakarma, aged about 23 years, daughter of Late Ramdeen Vishwakarma; (Daughter)

3. Ku.Somati Vishwakarma, aged about 23 years, daughter of Late Ramdeen Vishwakarma; (Daughter)

4. Ratan Vishwakarma, aged about 15 years, S/o Late Ramdeen Vishwakarma; (Son)

5. Ku. Roshani Vishwakarma, aged about 13 years, D/o. Late Ramdeen Vishwakarma. (Daughter)

---- Appellants

Appellants 4 & 5 were minors, therefore, represented through natural guardian Mother Smt. Shanti Vishwakarma, Caste:- Vishwakarma & All were the R/o Ward No. 5, Pendra, Tahsil & P.S. Pendra, District-Bilaspur, C.G.

Versus

1. Gopal Singh Paikara, aged about 40 years, S/o:-Shriman singh Paikra, Caste-Kawar, resident of village-Nevsa(Navapara), P.S. Gaurella, Tahsil- Pendra Road, District-Bilaspur, C.G.

2. Ganesh Singh Rathore, aged about 22 years, son of Girnar Singh Rathore, Caste-Rathore, resident of Village Nevsa(Navapara), P.S. Gaurella, Tahsil-Pendra Road, District-Bilaspur, C.G.

3. Rupam Ram, aged about 57 years, Son of Balasai, Caste-Rajwar, (Owner)

4. Kishunram, son of Rupam Ram, aged about 32 years, Cast-Rajwar (Owner)

5. Mahesh Ram, Son of Rupam Ram, aged about 26 years, Caste-Rajwar (Owner)

Respondent no. 3-5 were the resident of Village-Madanpur, Post-Silfili, P.S. Jai Nagar, Tahsil & District-Surajpur, C.G.

6. H.D.F.C.E.R.G.O General Insurance Co. Ltd. through Branch Manager, Shadole, District-Shadole (M.P.)

---- Respondents

For Appellants	:	Mr. Hemant Gupta, Advocate .
For Respondent No. 6	:	Mr. Rohitashva Singh, Advocate .

HON'BLE SHRI JUSTICE GOUTAM BHADURI

ORDER ON BOARD

09/07/2015

1. This is an appeal by the claimants against the award dated 25th August, 2011 passed by the learned Additional Motor Accident Claims Tribunal, Pendra Road, District Bilaspur, Chhattisgarh in Claim Case No.04/2011 whereby after deducting 50% contributory negligence, an amount of Rs.5,53,000/- has been awarded to the legal heirs of deceased Ramdeen.

2. Briefly stated facts of the case are that deceased Ramdeen, aged about 45 years, was a resident of village Pendra and was working as motor tractor mechanic. It is pleaded that on 13.02.2010 he was going on his motorcycle bearing No. C.G.10 ZA/4616 from Amarpur to Pendra and on the way when he reached a place known as Ghasiapara, Pendra, the offending Tractor-Trolley bearing C.G.15-A/3010 & 3011 driven by non-applicant No.1 Gopal Singh Paikra in a rash and negligent manner dashed the motorcycle whereby Ramdeen sustained injuries and died on the spot. Subsequently, the claimants being dependents of the deceased have filed claim application seeking compensation of Rs.28,50,000/- on various heads. Non-applicants 1 to 4, driver and owner of the vehicle denied the entire happening of the accident and it was pleaded that the claim petition be dismissed.

3. Learned Tribunal after evaluating the facts and evidence passed an award of Rs.5,53,000/- in favour of the claimants by holding that the deceased was liable for contributory negligence to the extent of 50% for the cause of the accident.

4. This appeal is by the claimants. After notice of the claim petition, a cross objection has also been preferred by the respondent Insurance Company which was delayed by 635 days. Therefore, the appeal filed by the claimants is for enhancement while the cross objection filed by the Insurance Company is for setting aside the impugned award passed against it and for reducing the amount of award. Even otherwise, the delay of 635 days cannot be ignored as a matter of right and the reasons which have been stated by the Insurance Company are not further supported by any documentary evidence.

5. A perusal of the cross objection would show that since it is delayed by 635 days, the reasons have been stated that it was decided by the respondent Insurance Company to satisfy the award but on audit objection and legal opinion of the counsel, the matter was placed before the competent authority and after necessary approval, respondent No.6 Insurance Company decided to file the instant cross objection.

6. A perusal of application filed under Section 5 application which sought to condone the delay of cross-objection would show that the averments though have been made nothing has been placed on record in support thereof and bald statements have been made by the Insurance Company. Even otherwise, the delay of 635 days cannot be ignored

easily and the reasons which have been stated by the Insurance Company are not further supported by any documentary evidence. It is settled preposition that the procedural lapses committed by a Corporate Body are normally considered liberally, but when the delay is exorbitant, the same cannot be claimed as a matter of right. The Insurance Company has failed to place on record when the audit objection was raised and when further legal opinion was sought so as to evaluate the bonafide, which has been stated in the application. It appears that in casual manner the cause of delay has been shown in preferring the cross objection. Therefore, in my opinion, the same cannot be condoned is usual course. Consequently, I do not find that the Insurance Company has shown sufficient cause to condone delay in filing the cross objection in the case. In the result, the delay of 635 days in filing the cross objection is disallowed and the cross appeal is dismissed.

7. Now coming to the issue of contributory negligence, learned counsel for the appellant submits that the Court has given a verdict on the presumption against the evidence on record. He would submit that in a compensation case, such presumption cannot be drawn. He refers to the statements of the driver of the offending vehicle and submits that as per the statement, the entire accident was denied, however, the accident was proved by the document of criminal case and consequently as the statement itself goes against the evidence, the version of driver could not have been accepted. He further submits that the deduction of contributory negligence to the extent of 50% as against the pleading of the non-applicants is completely absurd. With respect to quantum of compensation, it is further submitted that the court has failed to take into account the future prospects and on the conventional heads, very meagre amounts have been awarded. Therefore, he prays that compensation also needs to be suitably enhanced.

8. Per contra, learned counsel appearing for the Insurance Company opposes the argument and would submit that the award is well merited which do not call for any interference by this Court.

9. I have heard learned counsel for the parties and have also perused the evidence on record.

10. The learned Tribunal has held that deceased Ramdeen was liable for contributory negligence to the extent of 50% for the accident caused accordingly deducted 50% from the amount worked out on total dependency. The eye witnesses have not been examined in this case. On behalf of the applicant claimants, the statements recorded in criminal case which arose out of the accident was exhibited. The FIR in this case was marked as Ex.A.1 which was lodged by one Vijay Vishwakarma wherein it was stated that on 13.02.2010 at about 10 p.m. the deceased was coming back to his house on his motorcycle and at that time when he reached near a place known as Ghasiyan water tank, he was dashed by Tractor-Trolley bearing No. C.G. 15-A/3010 & 3011 which was driven in rash and negligent manner and after the accident, the Tractor fled away from the scene. The report was made on 13.02.2010 itself and the time is shown as 10.25 p.m

meaning thereby immediately within a half an hour, the report was made.

11. The claimants exhibited the statements of one Vijay Vishwakarma, Anand Kumar Gupta & Sajjan Kumar vide Ex.P-20, P-21 & P-22. Reading of their statements would show that Nand Kumar Gupta and Sajjan Kumar Karelia were the third parties and they have seen the incident and stated that at the relevant time, the deceased who was coming on his motorcycle was dashed by the offending Tractor bearing No.C.G.15-A/3010 & 3011. These statements were accepted by A.W.1. No cross examination is made with respect to such document by the respondents.

12. The driver of Tractor namely Gopal Singh Paikra was examined on behalf of the non-applicants. It is stated that the accident had occurred since the deceased fell down from the motorcycle and no accident had occurred by the offending Tractor Trolley. He denied the suggestions which were given to him about the accident. The witness further admits that after the accident, the police had seized the tractor trolley along-with RC book, insurance papers etc. He further stated that he has not made any complaint to the higher police officials on the ground that he has been falsely implicated in this case. He specifically stated that the facts contained in para 2 of the examination-in-chief that the deceased Ramdeen Vishwakarma fell down from motorcycle and died because of the reason that he consumed liquor was not mentioned in the return/report. He further stated that he does not know whether Ramdeen used to consume liquor. It is further stated that he cannot say that the facts contained in para 2 of the statement under Order 18 Rule 4 CPC, were mentioned in the written statement. In view of such statement made by non-applicant No.1/driver, his evidence by way of affidavit itself was placed under doubt and it cannot be given credence.

13. On perusal of the statement of this witness on behalf of the non-applicants, one fact comes to fore that the non-applicants have completely disowned the accident. However, when the reasons are stated that no report was made to the police for false implication, the answer which has been given do not inspire the confidence. A perusal of the criminal case, would show that immediately after the accident, the report was made stating the number of tractor within a very short span of 25 minutes and subsequently, the tractor-trolley was seized and was obtained on Suprudnama. Consequently, from the evidence on record it appears that the non-applicant driver tried to establish the fact that no accident had occurred but actually by evaluating the evidence it would reveal that the accident had occurred by the offending tractor trolley.

14. The contributory negligence has been interpreted by the Court on number of occasions. Likewise, one of the decision rendered by Madhya Pradesh High Court (Full Bench) reported in ***2007 (4) M.P.H.T. 535 (FB) in case of Dev Singh Vs. Vikramsingh and others***, the following preposition was laid down by the Court regarding contributory negligence. It has been held in para 8 thus:

"8. The meaning of "Contributory Negligence" as distinct from the "Negligence" has been very aptly brought out in the

judgment of K.G. Balakrishnan, J (as his Lordship then was) in ***Pramodkumar Rasikbhai Jhaveri Vs. Karmasey Kunvargi Tak and others (AIR 2002 SC 2864)*** *in Para 8 at Page 2866 in the following words:--*

> "The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as "negligence". Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence", it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an 'author of his own wrong'."

It will be clear from what has been held by Balkrishnan, J., that negligence ordinarily means breach of legal duty to take care, whereas contributory negligence means the failure by a person to use reasonable care for the safety of either of himself or his property, so that he becomes blameworthy in part as an "author of his own wrong."

15. Further, as has been laid down in ***National Insurance Company Limited V. Sinitha & others, (2012) 2 SCC 356***, in case when the issue of contributory negligence is raised then the onus of proof of contributory negligence lies on the shoulder of defence (owner or insurer). 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 sustained and thereby is set aside.

16. Now coming to the question of quantum, the Tribunal has assessed the income of the deceased as Rs.9000/- per month. In absence of challenge to the same as the cross appeal has been dismissed, the income of Rs.9000/- per month or Rs.1,08,000/- per annum taken by the learned Tribunal appears to be correct in view of the evidence of wife A.W.1 and other claimant witnesses namely Arun Kumar, Bihari Singh Rathore and Vijay Kumar Vishwakarma that the deceased was motor tractor mechanic and was running the workshop at new bus stand Pendra. As the deceased was self employed and belonged to the age group of 40-50 years, therefore, in view of the principles laid down in *Rajesh and others Vs. Rajbir Singh and others (2013) 9 SCC 54*, there would be addition of 30% to the income by way of future prospects which also takes within the sweep of escalation of price existing in the market. Thus after adding 30%, the total income comes to Rs.1,40,400/- (1,08,000 plus 32,400).

17. Now coming to the deduction, the claim petition was filed by the widow and four minor children, total five in number, and as per the norms laid down in *Sarla Verma Vs. DTC (2009) 6 SCC 121*, if the number of dependents are 4 to 6, 1/4th is to be deducted towards personal expenses. After deducting 1/4th, the annual dependency comes to Rs. 1,05,300/- (1,40,400 – 35,100). As per the postmortem report of the deceased, his age was shown to be 45 years, therefore, in view of the multiplier table given in *Sarla Verma's case (supra),* multiplier, 14 would be applicable. Thus the total dependency would come to Rs.14,74,200/-.

18. Similarly, Tribunal has granted meagre sums under the conventional heads i.e., Rs. 2000/- for funeral expenses and Rs.5000/- for loss of consortium to wife. Since the amounts granted by the Tribunal under these heads are scanty, I propose to grant Rs.1,00,000/- for loss of consortium and Rs.15,000/- for funeral expenses while the amount of Rs.6000/- granted for repairing the motorcycle is maintained. Thus, applying the principles laid down in *Sarla Verma (supra)*, the compensation to be reassessed as follows:

S.No.	**Heads**	**Calculation**
(i)	Annual income of deceased @ Rs.9000/- per month	Rs.1,08,000/-
(ii)	30% of (I) above to be added as future prospects	(Rs.1,08,000 +32,400= Rs.1,40,400/-
(iii)	1/4th of (ii) deducted as personal expenses of the deceased	Rs. 1,40,400 – 35100 = Rs. 1,05,300/-
(iv)	Compensation after multiplier of 14 is applied	Rs.1,05,300 x 14 = Rs.14,74,200/-
(v)	Loss of consortium to wife	Rs. 1,00,000/-
(vi)	Repairing charges of motorcycle as awarded by the Tribunal	Rs. 6,000/-
(vii)	Funeral expenses	Rs. 15,000/-
	Total	**Rs.15,95,200/-**

19. Thus the total compensation will be Rs.15,95,200/-. After deducting Rs.5,53,000/- awarded by the tribunal, the enhancement would be Rs. 10,42,200/-.

20. In the result, the appeal is partly allowed. The claimants will be entitled to the said sum of Rs. 10,42,200/- in addition to what is already awarded with interest at the rate of 9% per annum from the date of enhancement of the award. The claimants are entitled to receive the said compensation from the Insurance Company. No order as to costs.

21. The Registry is further directed to communicate the claimants in writing the “amount of award enhanced 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

Rao