NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 909 of 2011

1. Sahodra Bai, Wd/o. Muritram Sahu, Aged About 45 Years.
2. Vijay Kumar, S/o. Late Muritram Sahu, Aged About 25 Years.
3. Latel Ram, S/o. Late Kanhaiya, Aged About 75 Years.
4. Budhaiya Bai, W/o. Latelram, Aged About 70 Years.

All R/o. Village Barela, P.S. Jarhagaon, Tahsil Mungeli, District Bilaspur (C.G.).

---- Appellants

Versus

1. Bhagbali, S/o. Gariba Patre, Aged About 34 Years, R/o. Village Badhmar, Chowki – Fasterpur, Tahsil- Mungeli, District Bilaspur (C.G.).
2. Santosh Kumar, Aged about 40 Years, R/o. Adarsh Nagar, Ward No.3, Kawardha (C.G.).
3. Iffco Tokiyo General Insurance Co. Ltd., 3rd Floor, Shop No. 345, 347 Lalganga Complex, Raipur (C.G.).

---- Respondents

For Appellants	:	Mr. A.L.Singroul, Advocate
For Respondent No.3	:	Mr. Amrito Das with Mr. Nimish Kiran Sharma, Advocate

---

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28/07/2015

1. The appeal is against the award dated 02.05.2011 passed in Claim Case No.19/2011 by the learned Additional Motor Accident Claims Tribunal, Mungeli, District Bilaspur.

2. The claim case was preferred by the widow, son and mother & father of the deceased namely Muritram Sahu. It was pleaded that on 24.09.2009, the deceased was coming towards Mungeli from Pandariya, at that time,

when he reached near a place known as Jain Rice Mill, a Bolero vehicle being driven by the original Non-applicant No.1 in rash and negligent manner dashed the deceased. The Bolero vehicle was coming from the opposite directions. By impact of such accident, Muritram died. It was stated that at the time of death, Muritram was aged about 49 years and was working as Assistant Agriculture Development Officer at Agriculture Department, Pandariya and he was getting a salary of Rs.20,000/- per month. Consequently, on the different heads, an amount of Rs.32,00,000/- was claimed.

3. The Non-applicant No.1 & 2 (Driver & Owner) of the vehicle refuted the averments of the claim petition and it was stated that at the time of accident, the vehicle was insured with the original Non-applicant No.3 i.e. Iffco Tokiyo General Insurnace Co. Ltd. and therefore the insurance company is liable to make good the payment of compensation.

4. The Non-applicant No.3, Insurance Company, contended about the contributory negligence on the part of the deceased and further stated that at the time of accident, the vehicle was being driven in breach of the terms of policy and therefore the Insurance Company is not liable to pay any compensation to the claimants.

5. The learned Claims Tribunal after evaluating the facts and evidence has passed an award of Rs.8,42,818/- in favour of the claimants by holding that the deceased was liable to the extent of 50% contributory negligence. The challenge is therefore in the instant appeal by the claimants to such finding of contributory negligence and quantum of award.

6. Learned counsel for the appellants/claimants would submit that without any rhyme and reason, only by assuming the fact that there is a head on collision, the Tribunal has recorded a finding that the deceased was liable for the contributory negligence to the extent of 50%. It was further contended that the evidence which is adduced on behalf of the claimants

would show the Bolero vehicle had caused the accident, therefore, simply because if there was a head on collision, the theory of contributory negligence cannot be invoked. He further submits that the just compensation has also not been awarded, therefore, the claim amount should be reassessed.

7. Per contra, learned counsel appearing on behalf of the insurance company supported the award. It is submitted that according to the evidence adduced by the claimant himself, it would be clear that the deceased was liable for the contributory negligence. He referred to the statement of AW-2 and contended that according to the statement of the eye-witness, the deceased himself met with an accident and head on collision was made which goes to show the factum of negligence on the part of the deceased. It is therefore submitted that the order of the Court below is well merited, which do not call for any interference.

8. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.

9. The learned Claims Tribunal has given a finding about the contributory negligence on the part of the deceased. The finding of contributory negligence has been arrived at taking into the fact that there has been a head on collision. The eye-witness in this case is examined as AW-2 namely Ashok Kumar Chandrakar. He has stated that on the date of accident, he was standing at a Betel shop near Jain Rice Mill, which is a place of accident. He has further stated that at the relevant time he saw the Bolero vehicle driven by the Non-applicant No.1 Bhagbali in a rash and negligent manner came to the wrong side of the road and dashed the deceased who was coming from Pandariya. Nothing has come in the cross examination of this witness to negate the same.

10. The son of the deceased Vijay Kumar Sahu is examined as AW-1. In his statement, he has exhibited the documents of the criminal case. The FIR is marked as Ex.P-2, which was lodged by Hansraj Sahu, which shows that immediately after the accident at about 5:20 within one hour the report was made wherein it was stated that the Bolero vehicle without a number plate, red in colour, driven by Bhagbali in a rash and negligent manner had dashed Muritram Sahu whereby he died on the spot. The map of the site is marked as Ex.P-7. Perusal of such map, crime detail would show. 'A' has been marked as the place of accident and towards left Pandariya is shown and towards right Mungeli is shown. According to the statement of the witness AW-2, the deceased was coming from Pandariya to Mungeli. The accident happened on the left side of the road while the Jeep was going from Mungeli to Pandariya. The spot of the accident is shown on the extreme left after the road ends. The crime detail from the map finds support in the cross examination wherein at para 7 the witness has stated that the accident happened at the end of the road at it's side in front of Betel shop. Meaning thereby, if such statement is assessed along with the map, it would reveal that the accident happened after the road had ended on the left side. Therefore, conjoint valuation of the crime detail form i.e. map, reading it with the eye-witness would show that the offending vehicle was going from Mungeli to Pandariya went on the extreme right side of the road and dashed the deceased, who was on right side of road.

11. Consequently, there may be a head on collision but the same cannot be attributed to the deceased since according to the evidence, he was at the extreme left of the road while the Jeep was on the extreme right, on the wrong side of the road when the accident happened. Therefore, survey of the evidence would show that the finding arrived at by the learned

Tribunal is completely wrong without appreciating the evidence, which is existing on record. Consequently, the finding of contributory negligence arrived at by the learned Court below cannot be sustained and is accordingly set aside.

12. The Tribunal has assessed the salary of the deceased to Rs.19,046/- which is proved by AW-4. The salary slip is marked as Ex.P-10. Reading of the Ex.P-10 would show that the Tribunal has wrongly calculated the deduction of Rs.1,888/- and Rs.150/- which is on the heads of Provident Fund and Group Insurance. The salary therefore works out to Rs.21,084/- as would be evident from Ex.P-10. The deceased was aged 50 years as per the post mortem report Ex.P-5. Therefore, since he was in between the age group of 40-50, there will be an addition of 30% for the future prospects as has been laid down in case of ***Rajesh & Others v. Rajbir Singh & Others*** reported in ***(2013) 9 SCC 54***. Therefore, the annual income would be calculated as Rs.21,084 x 12 = 2,53,008 + 75,902 (30%), which comes to Rs. 3,28,910/-.

13. The accident took place on 24.09.2009, therefore, as per the income tax slabs as was applicable in the financial year 2009-2010 and assessment year 2010-2011, upto first Rs.1,60,000/- no income tax was payable. The rates of income tax in respect of individuals, Non-specified HUFs and AOPs for the assessment years 2010-2011 is shown in the table given below:-

Rates of income tax for Assessment year 2010-11 (in Percentage)		
First	Rs. 1,60,000.00	Nil
Next	Rs. 1,40,000.00	10%
Next	Rs. 2,00,000.00	20%
Balance		30%

So by exempting Rs.1,60,000/- from annual income of Rs.3,28,910/-, the remaining amount comes to Rs.1,68,910/-. Subsequently on the next Rs.1,40,000/-, 10% tax was leviable, which comes to Rs.14,000/- and after deduction, the remaining slab of taxable income comes to Rs.28,910/-, wherein 20% tax was leviable. So by further levy of tax of 20%, it comes to Rs.5,782/-. Thus, the total income tax leviable was Rs.19782/- i.e. *14,000/-* on 1,40,000/- + *5,782* on 28,910/-. On this amount, 2% education cess i.e. Rs.395/- and 1% higher secondary education cess i.e. Rs.197/- has to be added, thereby, the total income tax comes to Rs. 20,374/-. After deducting the said tax of Rs.20,374/-, the annual income is worked out to Rs.3,08,536/- (Rs.3,28,910 - tax 20,374).

14. The claim petition was preferred by widow, son and mother & father of the deceased, therefore, as per the law laid down in case of ***Sarla Verma Vs. Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121***, the deduction towards personal expenses should be 1/4th, therefore, after deducting ¼ from the annual income, the annual dependency works out to Rs.2,31,402/- (3,08,536 – 77,134). Further, the age of the deceased was stated to be 50 years as per the post mortem report, therefore, multiplier of 13 would be applicable, therefore, the total amount of dependency works out to Rs.30,08,226/-.

15. On the conventional head, nothing has been awarded, therefore, following the principles laid down by the Supreme Court in case of ***Rajesh & Others v. Rajbir Singh & Others*** reported in ***(2013) 9 SCC 54,*** an amount of Rs.1,00,000/- is awarded to the wife for loss of consortium and Rs.25,000/- to the son for loss of love & affection. Further Rs.50,000/- is awarded to the mother and father for loss of love & affection and for loss of estate, another Rs.25,000/- is awarded. For

funeral expenses, in the opinion of this Court, Rs.25,000/- would be just and proper. Therefore, the compensation is recomputed as under :-

Sl. No.	Heads	Calculation
(i)	Loss of dependency.	Rs. 30,08,226/-
(ii)	For loss of consortium to the wife.	Rs. 1,00,000/-
(iii)	For loss of love & affection to the son.	Rs. 25,000/-
(iv)	For loss of love & affection to the mother & father.	Rs. 50,000/-
(iii)	For loss of estate.	Rs. 25,000/-
(iv)	For funeral expenses.	Rs. 25,000/-
	Grand Total	**Rs. 32,33,226/-**

16. Thus, the total compensation is recomputed as Rs.32,33,226/-. After deducting Rs.8,42,818/- as awarded by the Tribunal, the enhancement would be Rs.23,90,408/-.

17. In the result, the appeal is allowed. The appellants will be entitled to the said sum of Rs.23,90,408/- in addition to what is already awarded by the Claims Tribunal with interest at the rate of 9% per annum from date of filing of petition till the date of its realization.

18. It is directed that out of the total amount of compensation, the mother & father of the deceased will get Rs.5,00,000/- and son of the deceased will also get Rs.5,00,000/-. The remaining amount of awarded sum will be disbursed to the wife of the deceased.

19. 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 Devanagari language.

20. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge

Ashok