HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 553 of 2013

1. Smt. Savita Kashyap, Aged About 23 Years Wd/o Late Girish Kashyap R/o Tifra, P.S. Civil Lines (Now Sirgitti), Revenue & Civil Distt. Bilaspur C.G.

2. Bhavishya Kashyap, aged about 2 months, S/o Late Girish Kashyap Minor, Through- Mother Smt. Savita Kashyap, R/o Tifra, P.S. Civil Lines (Now Sirgitti), Revenue & Civil Distt. Bilaspur C.G.

3. Satrupa Kashyap wife Chhedi Lal Kashyap Aged About 47 Years R/o Tifra, P.S. Civil Lines (Now Sirgitti), Revenue & Civil Distt. Bilaspur C.G.

4. Chhedilal Kashyap S/o Late Banshilal Kashyap Aged About 49 Years R/o Tifra, P.S. Civil Lines (Now Sirgitti), Revenue & Civil Distt. Bilaspur C.G.

5. Ku. Geetanjali Kashyap daughter of Chhedilal Kashyap Aged About 17 Years Minor, Through- natural guardian mother Satrupa Kashyap, R/o Tifra, P.S. Civil Lines (Now Sirgitti), Revenue & Civil Distt. Bilaspur C.G.

---- Appellants

Versus

1. Ramesh Prasad Dwivedi S/o Shriram Shiromani Dwivedi Aged About 33 Years R/o Allahabad-Kanpur Transport, Bilaspur Road, Birgaon, Civil & Revenue Distt. Raipur C.G.

2. Smt. Manju Sharma R/o Shanti Nagar, Jagdalpur, Distt. Bastar, Civil & Revenue Distt. Bastar C.G.

3. Branch Manager Shriram General Insurance Company Limited, E-08-EPIP RLLCO, Industrial Area, Seetapura, Rajsthan, Through- Branch Manager, Sriram General Insurance Company Limited, Shriram Finance, Raipur, Distt. Raipur C.G.

---- Respondents

For appellants – Miss. Neeta Choubey, Advocate.
For Respondent No.3 – Shri S.S. Rajput and Miss. Renu Singh, Advocates.

Hon'ble Shri Justice Goutam Bhaduri
Order

30/09/2015

1. This appeal is against the award dated 26/03/2013 passed in claim Case No.17/12 by the Sixth Additional Motor Accident Claims Tribunal, Bilaspur.

2. Claim petition was preferred by wife, minor son, mother, father and sister of the deceased namely Girish Kashyap. It was pleaded that on

24/02/2010 deceased Girish Kashyap was going from Bilaspur to Jagdalpur when he reached a place near Farasgaon which is 9 km ahead of Chichadi Mod a truck bearing No.C.G.17/H-1177 which was stationery in the middle of the road without parking light signs on was stationery which caused the accident. Since at the relevant time another car was passing by because of the head light the deceased wherein he was travelling could not identify the stationery car and as such dashed into the truck. On the different heads an amount of Rs.32,39,500/- was claimed. It was contended that at the time of the accident deceased was aged about 24 years. Non-applicants No.1 and 2 the driver of the offending truck Ramesh Prasad Dwivedi and Smt. Manju Sharma owner of the offending truck refuted the averments of the claim petition and stated that on the date of accident it was insured with non-applicant No.3. It was further stated that at the relevant time vehicle was not stationery one and it was moving in the high way but the road was very narrow but in order to cross the culvert in hurry accident had happened. It was therefore stated that for fault the deceased himself, he invited the situation which resulted into accident. The defence was of contributory negligence.

3. The original non-applicant No.3 the insurance company stated that the driver was not holding valid licence to drive vehicle bearing No. C.G.17/H-1177. It was also stated that the deceased himself could not control the vehicle and dashed into the truck. Owner of the vehicle wherein deceased was travelling which met with the accident and the insured thereof are the necessary parties to adjudicate the claim. Further it was also denied that deceased had income of Rs.2,10,000/- and also contended that he was not holding valid licence. On such ground the insurance company disowned it liability.

4. Learned tribunal after assessment of the evidence has passed an

award of Rs.4,32,000/- for the purpose of dependency, however it held that deceased was liable for contributory negligence to the extent of 50% and deducted the amount, thereby with other compensation made under the conventional head award of Rs.2,71,000/- was passed.

5. Learned counsel for the appellants submits that court has completely misread the evidence on record and held contributory negligence of the deceased as the offending vehicle was stationery at the middle of the road at night without any parking light signs on. Consequently, concept of contributory negligence cannot be evoked. It is further submitted that tribunal has also wrongly assessed the income of the deceased and despite the income was proved by filing income tax return, without any valid reason same was not accepted. It is submitted that according to the income tax return the income of the deceased was Rs.2,10,000/- per annum and assessment should have been made on the basis of that. Therefore, it was submitted that amount of award be enhanced.

6. Per contra, Shri S.S. Rajput, Advocate assisted by Miss. Renu Singh, Advocate would submit that award is well merited which do not call for any interference as it was a clear case of contributory negligence. It is further submitted that in absence of the income tax return having been proved, income so assessed by the tribunal is correct which do not call for any interference.

7. I have heard learned counsel for the parties at length, perused the documents and the evidence.

8. Initially the finding of the contributory negligence is considered.

9. The claimants on their behalf adduced evidence of wife. Wife had stated that due to the stationery truck which was standing at the middle of

the road the deceased/husband dashed into back of such stationery truck which was standing without any parking light. Further reading of the evidence would show that she is not an eye witness to the incident. Eye witness in this case is examined as one Jagdishwar Jaiswal. This witness has stated that on the date of incident on 24/02/2010 he was going with his family to Dantewada and while they were traveling in the car, another Santro car was moving in front of them, when they reached near a placed called Chichadi mod, a truck bearing No.C.G.17/H-1177 was parked in middle of the road without any indication or parking light. At the same time another Scorpio car was taking a bypass and because of the head light truck could not be spotted and the Santro car wherein two persons were traveling dashed into back of the truck. He further stated that at the time of accident it had rained also and witness has stated that he was at a distance of 25-27 feet away from the Santro car which met with the accident. Cross examination of this witness he affirms the fact when suggestion was given to him that because of car which was coming from opposite direction the driver of the santro car could not spot the truck which was stationery at the side of the road. This part of suggestion that truck was parked at the side of road was denied and it was affirmed that offending truck was stationery at the middle of the road and reasons assigned that there had been a break down of the truck. Further in the cross examination he admit this suggestion that scorpio car since was coming from opposite side had it's full beam at night, therefore deceased could not see the truck and dashed into back of it. Witness has further stated that incidentally he was behind the santro car which met with the accident and if he had been in the front they would have also dashed into the back of the truck in the same manner.

10. Now referring to the document of the criminal case which has been

exhibited as FIR Ex.P-2 which was lodged on the date of accident at about 4.30. FIR also contains the narration of happening of accident for the reason that the offending truck was stationery at the middle of the road without any parking light signs on or any indication. The FIR states that for such reason, the santro car had dashed into back of it. FIR was lodged by Mohd. Akbar who was driver of such santro car.

11. Driver of the offending truck has not been examined.

12. Conjoint reading of the statement of the eye witness along with documents of the criminal case, FIR and the contents of the statement made it would be difficult to hold that the deceased was liable for contributory negligence. If a vehicle which had mechanical break down like offending truck and is parked at the middle of the road then in such case during the night hours in a high way the way the car met with the accident and dashed into back of stationery truck can always happen. In facts of case it cannot be assumed that driver of the vehicle which met with the accident was liable for contributory negligence. Even observation of the trial court that while driving a car there should have been reasonable distance between two cars has no applicability in this case. It has come in the evidence in this case that at the relevant time another Scorpio vehicle with full beam was coming from opposite side naturally therefore another vehicle which is parked at the middle of the road is virtually impossible to spot and to be noticed. Considering the facts the way the accident happened in this case and the evidence which has come on record it is clearly established that because of the parking of the offending truck bearing .C.G.17/H-1177 during the night which was stationery at the middle of the road without parking light caused the accident it is clearly established that because of the use of the offending vehicle in such manner as discussed as above the accident happened. In

the result, finding of the tribunal that deceased himself was liable for the contributory negligence cannot be sustained and it is accordingly set aside.

13. Now coming to the part of quantum of compensation. Tribunal has assessed the income of deceased to Rs.3000/- per month. Perusal of the record would show that two acknowledgement of income tax return are placed which have been exhibited as Ex.P-7 and Ex.P-8 which shows income of the deceased. Document Ex.P-7 is acknowledgement of Income Tax Department for assessment year 2008-2009 showing income of Rs.2,10,000/-. Another document Ex.P-8 is for assessment year 2009-2010 showing income of Rs.2,22,500/-. Tribunal has disbelieved the same as the document has not been proved by the income tax officer. Perusal of the document Ex.P-7 and Ex.P-8 would reveal that it bears seal and signature of the Income Tax Department of Bilaspur. If such documents are ignored then in such case in the considered opinion of this court it would lead to grant just compensation to the dependants. Taking into facts and documents placed on record, I deem it proper to remit back the case to the trial court with a direction that claimants if so advised, may summon officer from the Income Tax Department so as to prove authenticity of the documents Ex.P-7 and Ex.P-8 and record its finding about income and if court is of the opinion that said documents have been proved it shall re-assess dependency of the dependents.

14. On the conventional head tribunal has passed an award of Rs.5000/- for loss of estate for each claimant numbering into 5 thereby Rs.25,000/- has been awarded and for love and affection Rs.5000/- for each claimant numbering into 5 thereby Rs.25,000/- has been awarded. Further for funeral expenses Rs.5000/- has been awarded, in the opinion of this court the said amount under the conventional head also appears to

be too meager which also needs to be re-assessed in view of the law laid down in case **Asha Verman Vs. Maharaj Singh and Ors**. reported in **2015 AIR SCW 3577**. Therefore, considering the age of widow of the deceased, an amount of Rs.1 lakh is granted to the wife for loss of consortium, Rs.50,000/- is awarded for loss of love and affection to minor children, Rs.50,000/- is awarded to the mother and father for loss of love and affection, Rs.25,000/- is awarded to the sister for loss of love and affection, for loss of estate Rs.1 lakh is awarded and for funeral expenses Rs.25,000/- is awarded.

15. Therefore, order reads as under:-

(i) Contributory negligence as has been held by the learned tribunal is set aside.

(ii) Tribunal is directed to re-assess the dependency by taking fresh evidence by calling income tax officer to prove the authenticity of Ex.P-7 and Ex.P-8 income tax return and shall re-assess the dependency on the basis of income, if proved.

(iii) On the conventional head the income is re-assessed as under:-

S. No.	Heads	Calculation
(i)	for loss of consortium to the wife	Rs.1,00,000/-
(ii)	for loss of love and affection to minor children	Rs.50,000/-
(iii)	for loss of love and affection to mother and father	Rs.50,000/-
(iv)	for loss of love and affection to sister	Rs.25,000/-
(v)	for loss of estate	Rs.1,00,000/-
(vi)	for funeral expenses	Rs.25,000/-
	Total	Rs.3,50,000/-

16. The matter is remanded back to the learned Claims Tribunal with a direction that claimants if so advised, may summon officer from the Income Tax Department so as to prove authenticity of the documents Ex.P-7 and Ex.P-8.

17. The trial court is directed to decide the case within further period of six months from the date of receipt of the order.

18. Accordingly, the appeal is disposed of with the above direction.

19. No order as to cost. The parties shall appear before the tribunal on 30th October, 2015.

Sd/-
(Goutam Bhaduri)
JUDGE

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