NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 617 of 2001

1. Rajendra Kumar Pandey, aged about 60 years, S/o late Kuleshwar Prasad Pandey, R/o Kankali Hospital, Tatya Para Ward, Raipur (C.G.)

2. Smt. Saraswati Bai Pandey, aged about 51 years, Wife of Shri Rajendra Prasad Pandey, R/o Kankali Hospital, Tatya Para Ward, Raipur (C.G.)

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Versus

1. Chandan Singh, S/o Sher Singh, R/o Village Dherori, Police Station Bemetara, District Durg (C.G.) (Driver)

2. Kamal Chawda, S/o late Daya Bhai Chawda, R/o Krishi Farm, Village Gumchi, Police Station Urla, Tahsil and District Raipur (C.G.)

3. New India Assurance Co. Ltd., Branch No.2, Raipur Development Authority Building, Bajrang Market, Raipur (C.G.)

For Appellants	:	None
For Respondent No.3	:	Shri G.V.K. Rao, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Order On Board

24/06/2016

1. This appeal filed by the claimants is directed against the award dated 30-07-2001 passed by Third Motor Accident Claims Tribunal, Raipur (for short 'the Tribunal) in C.T. No.32/1999 whereby their claim petition has been dismissed.

2. Briefly, stated facts are that the claimants who are the parents of the deceased, filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') alleging that on 28-06-1998 when their son was travelling on the motorcycle bearing registration No. MP 23/M-8838, an accident took place between the motorcycle and Tractor bearing registration No. MP 23/GA-4916 which was being driven by Chandan Singh and was owned by Kamal Chawda. The said tractor was insured with New India Assurance Company Ltd.

3. The claim petition was filed claiming compensation for death of the deceased. The accident is not denied but the case of the respondents is that the accident occurred due to rash and negligent driving of the deceased himself.

4. The learned Tribunal decided that the claimants have failed to prove the negligence on the part of the driver of the tractor and thereby dismissed the claim petition holding that the deceased himself was negligent. Hence, this appeal.

5. None has appeared for the appellants. Earlier also the appellants were not represented, therefore, this appeal was dismissed on 10-09-2008. Later on, it was restored. This appeal is more than 15 years old and relates to an accident which took place more than 18 years back and, therefore, I proceed to decide this appeal in absence of learned counsel for the appellants.

6. The only relevant evidence to decide the issue of negligence is the statement of Ganesh Tiwari, who has stated that on 28-06-1998 at about 12-00 noon, while he was travelling on his scooter from Raipur to village Atari, on the way, one tractor was moving in front of Herohonda motorcycle. When the driver of the Herohonda motorcycle was over-taking the tractor then the tractor suddenly swerved to one side and the driver of the motorcycle suffered injuries in the accident. He had also taken the injured to hospital for treatment.

7. The Tribunal's finding appears to be true that it is the motorcycle which was overtaking the tractor, but a vehicle being overtaken has no business to suddenly swerve from one side to the other. A tractor does not move at a very high speed and normally a motorcycle would overtake a tractor. This witness has been cross-examined, but nothing has been extracted in his cross-examination. The driver of the tractor did not step into the witness box. The insurance company also did not examine any evidence to counter the version given by the witness. Therefore, I have no hesitation in holding that the tractor driver was mainly negligent for causing the accident. However, the motorcyclist should also have been more vigilant and as such

this is a case of contributory negligence. I assess the negligence on the part of the tractor driver at 66.6% whereas, on the motorcyclist at 33.3%.

8. As far as quantum is concerned, it has been proved that the deceased was getting Rs.3000/- p.m. and was 28 years old. When the parents of the deceased are claimants before the Tribunal, two methods have to be followed, firstly ½ of the income of the deceased is to be deducted and multiplier of 17 is to be applied taking into consideration the age of the parents. In the last few years, the second method has been used much more than award. Furthermore, as per the law laid down by Supreme Court in the case of **Sarla Verma (Smt) & others vs. Delhi Transport Corporation,** reported in (2009) 6 SCC 121, in case of the deceased being 28 years old at the time of death, 50% should be deducted on account of his personal expenses. Since the deceased was earning Rs.3000/- p.m. and was 28 years old, 50% of his income will have to be added towards his future prospects. After addition of the future prospects, the amount comes to Rs.4,500/-. Thereafter, 50% is to be deducted towards personal expenses of the deceased and finally the figure comes to Rs.2,250/- per month or Rs.27,000/- per annum. The deceased was 28 years of age. According to Sarla Verma's case, relevant multiplier would be 17 and, therefore, the compensation works out to Rs.4,59,000/-. A sum of Rs.11,000/- is awarded towards funeral expenses. A sum of Rs.40,000/- is further awarded towards loss of love and affection. Hence, the total compensation comes to Rs.5,10,000/-. Since I have held that 1/3rd is to be deducted towards negligence of the deceased, therefore, after deducting 1/3rd, i.e., the sum of Rs.1,70,000/- from the total compensation worked out, the compensation payable to the claimants comes to Rs.3,40,000/-. The claimants/mother and father of the deceased would be entitled to get the compensation as per the following apportionment:

(a) Mother of the deceased is entitled to = Rs.2,50,000/-

(b) Father of the deceased is entitled to =Rs. 90,000/-

On the total compensation of Rs.3,40,000/-, the claimants are entitled to get interest @ 6% per annum from the date of filing of the claim petition till realization of the full amount of compensation. All the respondents are held jointly and severally liable to pay compensation of Rs.3,40,000/- to the claimants along with the interest @ 6% per annum. However, since the vehicle was admittedly insured with the Insurance Company/respondent No.3, respondent No.3/insurance Company is held liable to pay the amount of compensation. The amount of compensation shall be deposited by the Insurance Company before the Claims Tribunal within a period of three months from today and the amount so deposited shall be distributed by the Claims Tribunal to the claimants in accordance with law.

9. The appeal is disposed of in the above terms. No order as to costs.

Sd/-
(**Deepak Gupta)**
Chief Justice

Rao/Anjani