

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MISC. APPEAL (C) NO. 912 OF 2010

1. Kali Ram Ram, S/o Late Shri Bauwa Ram Sahu, age 46 years
 2. Smt. Vimla Bai Sahu, W/o Kali Ram, age 43 years
 3. Ku. Tanuja, D/o Kali Ram, age 17 years
 4. Hajari Lal Sahu, S/o Kali Ram, age 15 years
 5. Tarun Sahu, S/o Kali Ram, age 13 years
- Appellants No. 3 to 5 are minor, through natural guardian mother
Appellant No.2 Vimla Bai W/o Kali Ram.
All R/o Village Dumartarai, Thana- Mana Camp, District- Bilaspur
(C.G.)

... Appellants

Versus

1. Narayan Gond, S/o Duhan Ram Gond, age 38 years, R/o Chirmiri Gelhapani, Thana- Chirmiri, Couri Korla, District Korla (C.G.)
2. Jawahar Lal Singh, S/o Ramadhar Singh, aged about 39 years, R/o Chirmiri, Chouri Korla, District- Korla.
3. The United India Insurance Company, through its Divisional Manager, United India Insurance Company, Kachari Chowk, Raipur, Tehsil & District Raipur (C.G.)
4. Smt. Bharti Bai Sahu, D/o Premlal Sahu, W/o Late Pawan Kumar Sahu, age 20 years, R/o Sahupara, Gudhiyari, Thana- Gudhiyari, District- Raipur (C.G.)
5. Deepak Kumar Sahu, S/o Late Pawan Kumar Sahu, age 3 months, Minor through his natural guardian mother Respondent No.4 Smt. Bharti Bai Sahu, R/o Sahupara, Gudhiyari, Thana- Gudhiyari, District- Raipur (C.G.)

... Respondents

For Appellants	:	Mr. K.K. Dewangan, Advocate.
For Respondent No.3	:	Mrs. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/09/2016

1. Aggrieved by the award dated 2.9.2008 passed by the Principal Motor Accident Claims Tribunal, Raipur ('the Tribunal', for short) in Claim Case No. 01 of 2008, the present appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by Appellants/Claimants, who are father, mother, sister and brothers respectively of deceased Pawan Kumar Sahu who died in a vehicular accident in the instant case.

2. By the impugned award dated 2.9.2008, a sum of Rs. 2,15,000/- with interest at the rate of 6% per annum has been awarded by the Tribunal as compensation in favour of Appellants No. 1 and 2 and Respondents No. 4 and 5, who are father, mother, wife and son respectively of deceased Pawan Kumar Sahu, fastening the liability for payment of the same, jointly and severally, upon Respondents No. 1 to 3 who were driver, owner and insurer respectively of Truck No.CG16-ZC/0125 at the relevant time.

3. Facts, in brief, as per the claim petition, are that on 4.10.2007, Pawan Kumar Sahu was travelling as a pillion rider on Motorcycle, bearing Registration No. CG04-CR/3271, which was being driven by Narendra Sahu and they were coming to Gudhiyari from Dumartarai. At the same time, at around 7:00 pm, Respondent No.1 by rashly and negligently driving the Truck, bearing Registration No. CG16-ZC/0125, hit the said motorcycle, on account of which both Pawan Kumar Sahu and Narendra Sahu fallen down and the head of Pawan Kumar Sahu came under the wheels of the said Truck and he succumbed to the injuries at the spot. Narendra Sahu also sustained greivous injuries.

4. This gave rise to the filing of the claim application under Section 166 of the Act, out of which this appeal arises, by the Appellants/Claimants before the Tribunal for a total compensation of Rs.13,04,000/- for the death of the deceased in the said vehicular accident.

5. Learned Counsel for the Appellants/Claimants has contended that the Tribunal has arbitrarily assessed the income of the deceased as Rs.3000/- per month as he was a skilled labour and was earning Rs.200/- per day by working as a marble worker. He further contended that the Tribunal has committed an error in holding that there had been 50%

negligence on the part of the deceased who was a pillion rider. He also contended that looking to the age of the deceased which was around 23 years at the time of accident, 50% increase in his future income was to be taken into consideration which has not been considered by the Tribunal. It was next contended that the amount under the conventional heads as also the interest on the compensation amount are also on the lower side. It was lastly contended that the Tribunal has wrongly held that Appellants No. 3 to 5, brothers and sister of the deceased, are not entitled to get the compensation, and further the apportionment of the amount of compensation awarded by the Tribunal in favour of Appellants No. 1 and 2 is also on the lower side. Thus, prayed that the impugned award may be modified and the amount of compensation may be enhanced suitably.

6. On the other hand, learned Counsel for Respondent No.3-Insurance Company has supported the impugned award.

7. Heard learned Counsel for the parties and perused the records of the case including the impugned award.

8. The Tribunal after recording the finding that there had been negligence to the extent of 50% on the part of the driver of the motorcycle as also the deceased, has awarded a compensation of Rs.2,15,000/- for the death of deceased Pawan Kumar Sahu in the vehicular accident which had taken place on 4.10.2007.

9. So far as negligence of deceased Pawan Kumar Sahu is concerned, the Tribunal on the basis of evidence which has come on record has recorded a finding that Narendra Sahu, who was riding the motorcycle, was equally liable towards payment of compensation as he was not having the proper valid licence at the time of accident. From perusal of evidence, both oral and documentary, which has been adduced on behalf of the parties, it is found that at the time of accident the deceased was not driving

the motorcycle but Narendra Sahu (AW-2) was driving the motorcycle. In such a state of affairs, even if it is assumed that there had been 50% negligence on the part of the driver (Narendra Sahu) of the motorcycle, then also as the deceased Pawan Kumar Sahu was not driving the motorcycle, it cannot be said that the deceased had contributed towards the accident in any manner. By any stretch of imagination, in normal circumstances, a pillion rider cannot contribute to the occurrence of an accident. The rider of the motorcycle may be at fault, that cannot be extended to the pillion rider to fix the negligence. As such, the negligence, in the instant case, is not contributory so far as deceased Pawan Kumar Sahu is concerned. Hence, in view of the totality of facts and circumstances of the case as well as the materials available on record, it cannot be said that the finding arrived at by the Tribunal so far as 50% negligence on the part of the deceased is proper and justified and the said finding in the opinion of this Court is liable to be and is hereby set aside.

10. As far as dependency of Appellants No. 3 to 5 upon the deceased Pawan Kumar Sahu is concerned, the finding recorded by the Tribunal in this regard cannot be said to be faulty as Appellants No. 3 to 5, who are sister and two brothers of the deceased, are not directly dependant upon the deceased nor do they fall within the definition of Class-I legal heirs, and thus the same deserves to be and is hereby affirmed.

11. So far as the quantum of compensation is concerned, the Tribunal has assessed the income of deceased Pawan Kumar Sahu as Rs.36000/- per annum which in the absence of any documentary proof cannot by any yardstick be termed as unreasonable looking to the year of accident which is 2007.

12. In addition, taking into consideration the fact that at the time of accident the deceased was 23 years of age and his wage has been accepted to be Rs.100/- per day, in times to come there would have been definitely an increase in the said wage. Under normal circumstances, it would be proper if the calculation of compensation is made taking into consideration at least 50% towards rise in his future income to be added for the purpose of calculating the quantum of compensation in view of the law laid down by the Supreme Court in the case of **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and Another** [2009 (6) SCC 121] and **Rajesh and Others Vs. Rajbir Singh and Others** [2013 (9) SCC 54].

13. Accordingly, after adding 50% of Rs.36,000/-, the actual income of the deceased comes to Rs.54,000/- per annum. Further, after deducting 1/3rd towards personal and living expenses of the deceased in view of the law laid down in **Sarla Verma** (supra) and also in **Santosh Devi Vs. National Insurance Co. Ltd** [2012 (6) SCC 421], the remaining amount i.e., Rs.36,000/- comes to as annual loss of dependency. In addition, as the age of the deceased was about 23 years at the time of his death on account of vehicular accident in question, applying a multiplier of 17 the total loss of dependency comes to Rs.6,12,000/-.

14. Furthermore, the compensation amount awarded to Respondent No.4/wife of the deceased for loss of consortium i.e., Rs.12,000/- appears to be on the lower side and which in the opinion of this Court should have been at least Rs.50,000/-. Likewise, Appellants No. 1 and 2 and Respondents No. 4 and 5 have been awarded Rs.5000/- towards love and affection and Rs.5000/- for funeral expenses which also appears to be on the lower side and which also according to this Court deserves to be enhanced by Rs.50,000/- and Rs.25,000/- respectively.

15. As such, the compensation has to be reassessed as follows :

Sl. No.	Heads	Calculation
(i)	Income	Rs.36000/- p.a.
(ii)	50% (i) above to be added as future prospects	Rs.36000+Rs.18000=Rs.54000 p.a.
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased	Rs.54000-Rs.18000 = Rs.36000 p.a.
(iv)	Compensation after multiplier of 17 is applied	Rs.36000x17 = Rs.6,12,000/-
(v)	Loss of consortium	Rs.50,000/-
(vi)	Loss of love and affection	Rs.50,000/-
(vii)	Funeral Expenses	Rs.25,000/-
Total Compensation Awarded		Rs.7,37,000/-

16. In the result, the appeal is allowed in part. The impugned award dated 2.9.2008 is hereby modified and accordingly enhanced from Rs.2,15,000/- to **Rs.7,37,000/- (Seven Lakh and Thirty Seven Thousand only)**. The amount, if any, already paid/deposited shall be adjusted from the enhanced amount of compensation. The enhanced amount of compensation shall also carry simple interest at the rate of 6% per annum from the date of filing of the claim application before the Tribunal till its realisation. So far as apportionment of the shares and the amount to be deposited in the fixed deposit is concerned, the same shall be made in the same proportion as directed by the Tribunal. Rest of the conditions of the impugned award shall remain intact. No costs.

Sd/-
(P. Sam Koshy)
Judge