

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.28 of 2009**

1. Shri Nantu Aaich S/o Shri Kalachand Aaich, aged about 60 years.
 2. Smt.Savita Aaich W/o Shri Nantu Aaich, aged about 55 years.
 3. Smt.Madhumita Aaich W/o Late Shri Tapan Kumar Aaich, aged about 28 years.
 4. Ku.Tusharita Aaich, aged about 3 & Half years (Minor), through legal guardian Smt.Madhumita Aaich W/o Late Shri Tapan Kumar Aaich.
 5. Master Aakash Aaich, aged about 1 & Half years (Minor), through legal guardian Smt.Madhumita Aaich W/o Late Shri Tapan Kumar Aaich.
- All are R/o Village Nayapara, Tahsil Bhanupratappur, District Kanker (C.G.).

---Appellants**Versus**

1. Dashrath Singh Dhruw S/o Shri Lakhan Singh Dhruw, aged about not known, R/o Ganganagar, Police Station Khamtarai, District Raipur (C.G.).
2. M/s. Manobhai Patel & Company, R/o Near Catholic Church, Bhanpuri, Raipur, District Raipur (C.G.).
3. Oriental Insurance Company Limited, Head Office CB 02, First Floor, Madin Manjil, Jail Road, Kachahri Chowk, Raipur, District Raipur (C.G.).

---Respondents

For appellants	:	Ms.Pritha Ghoshal under instructions of Ku.Sunita Jain, Advocate.
For respondent No.2	:	Shri Rishikant Mahobia, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****09/11/2017**

1. Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 24/09/2008 passed by the learned Additional Motor Accident Claims Tribunal (F.T.C.), Balod, District Durg (C.G.) in Motor Accident Claim Case No.64/2007.
2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.3,21,000/- along with interest @ 6% per annum.
3. While passing the said impugned award the Tribunal had reached to the conclusion, that there was an element of contributory negligence on part of the deceased for the accident to occur and have quantified the percentage of

contributory negligence at 50%. Thus, after computing the compensation at Rs.6,42,000/-, the Tribunal has awarded 50% of it as a compensation to the claimants at Rs.3,21,000/-.

4. The counsel for the appellants submits that firstly, the finding of contributory negligence as erroneous as that it is without any sufficient strong basis. Secondly it was contended, that the amount of compensation awarded is also on the lower side as the Tribunal has not taken into account the future prospects into consideration so also the deductions made should had been 1/4th and the multiplier applied should had been based on the principles of law laid down by the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.***[[2009} 6 SCC 121].

5. The counsel for the respondents however opposing the appeal submits, that once when there is a categorical finding of the facts by the Tribunal so far as contributory negligence is concerned, the same cannot be said to be bad in law. Likewise, the calculation of compensation by the Tribunal also is based upon the evidence which have been brought on record and therefore the appeal deserves to be rejected as there is no scope of interference with the impugned award.

6. Having heard the rival contentions put forth on either side so far as the issue of contributory negligence is concerned this court is of the opinion, that the reasons assigned by the Tribunal is just and reasonable as there is the evidence on record to show, that the deceased was traveling in the vehicle which hit the Truck from behind resulting in the accident. This evidence itself is sufficient to draw an inference of contributory negligence and therefore the finding of contributory negligence and the apportionment of negligence assessed by the Tribunal seems to be proper and the same is affirmed.

7. So far as the enhancement of compensation is concerned this court finds, that the Tribunal has rightly assessed the income of the deceased at Rs.80,000/- which is based upon the Income Tax Return.

8. Further this court finds, that the Tribunal have not taken into account future prospects while computing the compensation so also the multiplier applied would be as per the decision of the Supreme Court in the case of Sarla Verma (Supra).

9. Accordingly, accepting Rs.80,000/- as the yearly income of the deceased and if 40% of the same is added towards future prospects, the amount would come to Rs.1,12,000/- of which if 1/4th is deducted towards personal expenses, the amount would come to Rs.84,000/- which if multiplied by applying multiplier of 16, the amount would become Rs.13,44,000/-. Since this court has affirmed the finding of contributory negligence at 50%, the claimants shall be entitled for the compensation of Rs.6,72,000/- towards loss of dependency. It is ordered accordingly. In addition, the claimants shall also be entitled for an additional amount of Rs.70,000/- towards conventional head. Thus, the total compensation payable to the claimants would become Rs.7,42,000/- instead of Rs.3,21,000/- as assessed by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. The appeal stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit