

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 47 OF 2010

Dilbharan Rajwade, S/o Bal Sai, aged about 30 years, R/o Police Station and Tahsil Pratappur, District Surguja (C.G.)

... Appellant

Versus

1. Shiv Prasad, S/o Late Shri Mohit, aged about 80 years
 2. Jhaiyan Bai, W/o Shiv Prasad, aged about 75 years
 3. Sonmet Bai, W/o Late Shri Ram Kumar, aged about 26 years
 4. Sheela, D/o Late Shri Ram Kumar, aged about 6 years
 5. Punnar, S/o Late Shri Ram Kumar, aged about 4 years
 6. Parmeshwar, S/o Late Shri Ram Kumar, aged about 2 years
- Respondents No. 4 to 6 are minor through their natural guardian mother Sonmet Bai.

All are R/o Village- Jarhi, Police Chowki Bhatgaon, Police Station and Tahsil- Pratappur, District Surguja (C.G.)

... Respondents

For Appellant	:	Mr. Vivek Tripathi, Advocate.
For Respondents	:	Ms. Meena Shastri, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/09/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 17.12.2009 passed by the Second Additional Motor Accident Claims Tribunal (F.T.C.), Surajpur, District Surguja, in Motor Accident Claim Case No. 12/2008.
2. Vide the impugned award, the Tribunal in a proceeding under Section 166 of the Motor Vehicles Act has granted a compensation of Rs.2,38,000/- to the claimants with interest thereon at the rate of 7.5% per annum. While passing the award, the Tribunal has fastened the liability of payment of compensation upon the owner of the offending vehicle, i.e., the appellant, who owned the motorcycle bearing registration No. CG15-D/6185.

3. The case in brief is that the deceased-Ramkumar Rajwade, who was on a motorcycle No. CG15-D/5034, when he was standing near a shop was hit by the motorcycle driven by the appellant resulting in his death. A criminal case was registered against the appellant as Crime No. 156/2007 at Police Station Jainagar, District Surajpur where a case under Section 279, 337 and 304-A was registered against him. It is also pertinent to mention that the appellant at the relevant point of time did not have a licence to drive the motorcycle neither was the motorcycle insured at the relevant time. The Tribunal while passing the compensation had quantified the total compensation payable at Rs.4,76,000/- and the Tribunal had given a finding of contributory negligence fixing the ratio of negligence at 50:50 thereby making the claimants entitled for only 50% of the total compensation awarded, i.e., at Rs. 2,38,000/-.

4. The present appeal has been filed by the owner of the offending vehicle questioning the award and the claimants in the instant case, i.e., respondents, have also filed a counter-objection under Order XLI Rule 22 of the Code of Civil Procedure assailing the award seeking for enhancement of the compensation.

5. So far as the appeal of the appellant-owner is concerned, he has challenged the award on the ground that the finding of contributory negligence is erroneous. According to him, the accident in fact had occurred at the instance of deceased-Ramkumar inasmuch as it was the deceased who had come and dashed the appellant's vehicle and thus it was not the appellant who was responsible for the accident but it was the deceased-Ramkumar who was responsible for the accident. It was also contended by the counsel for the appellant that relying upon the contents of the Merg intimation as also the contents of the FIR it is difficult to say that the accident occurred because of the appellant having dashed the

deceased-Ramkumar, for the reason that the case of the claimants is that the appellant had dashed the vehicle of the deceased-Ramkumar whereas the deceased is said to have been in a shop at the time of accident therefore there cannot be two versions.

6. This contention of the appellant is hard to accept for the simple reason that an FIR has been lodged at Police Station Jainagar, District Surajpur against the appellant. The deceased-Ramkumar or the pillion-rider/Parmeshwar has not been made an accused, neither is the case where the appellant at any earlier point of time has stated that the accident occurred because of rash and negligent driving of the deceased. It is also not his contention that it was the deceased-Ramkumar who had dashed against the appellant. Thus, the said ground raised is not acceptable.

7. So far as the other ground, of the story of the claimants being doubtful also not tenable, for the reason that it is a case of the claimants as also the statement of the pillion-rider/Parmeshwar that they were standing near a shop of Vijendra Yadav on the motorcycle itself when the appellant came on a motorcycle and dashed the vehicle in which the deceased-Ramkumar and pillion-rider/Parmeshwar were sitting.

8. Since there is no sufficient evidence available either on record or has been adduced by the appellant which could disprove the stand of the claimants or which could create a doubt in the mind of the court particularly when a criminal case has been registered against the appellant, this Court does not find any strong case made out by the appellant calling for an interference with the impugned award so far as the fastening of liability upon the appellant is concerned and the appeal thus deserves to be and is accordingly rejected.

9. So far as the cross-objection filed by the claimants seeking for enhancement of compensation is concerned, the contention of the claimants is that accident in the instant case is of the year 2007 and that the deceased-Ramkumar was working as a mason which falls within a category of a skilled employee and therefore the notional income of Rs.3000/- a month as accepted by the Tribunal is on the lower side and the same deserves to be suitably enhanced. It was further contended that the Tribunal has also erred in not accepting the future prospects as a component while quantifying the compensation. Likewise, the compensation paid under the conventional heads also is on the lower side and thus prayed for a suitable enhancement of compensation awarded.

10. Having considered the contentions put forth by the counsel for the claimants, this Court finds that in the year 2007 the minimum wage which a mason would have earned under any circumstances would have been more than Rs.150/- a day which would make the monthly income to be Rs.4500/- and therefore this Court has no hesitation in holding that the quantification of compensation in the case of the claimants ought to have been accepting the monthly wage of deceased-Ramkumar to be at Rs.4500/-. It is also by now well settled principle of law that while quantification of compensation the income under the future prospects also has to be added. Since the deceased was aged around 28 years at the time of accident, 50% i.e. Rs.2250/- has to be added to the monthly income of Rs.4500/- towards the future prospects, the amount would come to Rs.6750/- per month and Rs.81,000/- per annum. If 1/4th of Rs.81,000/- is deducted towards the personal expenses, the remaining amount would be Rs. 60,750/-. If Rs.60,750/- is multiplied applying the multiplier of 17, the total income would be Rs.10,32,750/-. In addition, the compensation payable under the conventional heads, considering the number of

claimants to be 6 and taking into consideration the decisions of the Hon'ble Supreme Court in the cases of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and Another, 2009 (6) SCC 121**, **Sarla Devi and others v. Divisional Manager, 2014 (15) SCC 450**, and **Rajesh and Others v. Rajbir Singh and Others, 2013 (9) SCC 54**, this Court is of the opinion that a lump sum compensation of Rs.1,00,000/- shall meet the ends of justice. Thus, the total amount of compensation payable to the claimants shall be Rs.11,32,750/-.

11. As far as the contributory negligence is concerned, this Court finds it difficult to accept the finding of the contributory negligence, for the simple reason that there is no evidence on record except for the statement of the appellant as also that of one Manohar, wherein both of these witnesses have stated that the accident arose because of the vehicle driven by the deceased-Ramkumar which had hit the appellant resulting in the accidental death of the deceased-Ramkumar. However, except for the oral statement made by the appellant and the said Manohar, there is no other document to establish such finding and the same is not worth affixing the contributory negligence. Likewise, if we take into consideration the evidence of Parmeshwar (PW-2) it clearly reflects that he has specifically stated that when he reached the shop of the Vijendra Yadav, the appellant came on a motorcycle in which Parmeshwar as well as the deceased-Ramkumar were sitting. This statement of Parmeshwar has not been controverted in his cross-examination, thus it cannot be conclusively held that the two motorcycles were in motion nor can it be said that the accident occurred as a head on collision in the middle of the road. Unless there is a cogent piece of evidence establishing these facts, the principle of *res ipsa loquitur* cannot be applied. The finding of contributory negligence thus is accordingly set aside.

12. Resultantly, the appeal of the appellant-owner stands dismissed and the cross-objection of the respondents-claimants is allowed. The claimants shall be entitled for receiving the entire amount of compensation of Rs.11,32,750/- with interest at the same rate as has been awarded by the Tribunal.

/sharad/

Sd/-
(P. Sam Koshy)
Judge