

HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal (C) No. 1116 of 2010

1. Smt. Ratnibai Wd/o late Govind Pandey, aged about 33 years
2. Ku. Bharti D/o late Govind Pandey, aged about 12 years
3. Pukhraj S/o late Govind Pandey, aged about 8 years
4. Ku. Indu D/o late Govind Pandey, aged about 6 years

Appellants 2 to 4 are minor through their natural guardian/mother
Smt. Ratni Wd/o late Govind Pandey

All above resident of village Bedma, Police Station Keshkal, District
Bastar (CG)

---- Appellants

Versus

1. Tulsiram S/o Chaitram Netam, aged about 25 years, R/o Devdongar,
Police Station Farasgaon, District Bastar (CG)
2. Ahmed Mukhtyar Khan S/o Hazikhan, R/o Tikrapara, Dhamtari,
District Raipur (C.G).
3. United India Insurance Company Limited, Branch Office Stadium
Road, T. P. Nagar, Korba (C.G)

---- Respondents

Misc. Appeal (C) No. 1115 of 2010

1. Smt. Vedvati Wd/o late Kirty Pandey, aged about 32 years
2. Smt. Lachchhan Wd/o late Kirty Pandey, aged about 30 years
3. Sadhuran S/o late Lalit Pandey, aged about 65 years
4. Smt. Balmati W/o Sadhuran Pandey, aged about 60 years
5. Dilip S/o late Kirty Pandey, aged about 12 years
6. Ku. Mahendri D/o late Kirty Pandey, aged about 10 years
7. Ku. Pallavi D/o late Kirty Pandey, aged about 8 years

Appellants 5 to 7 are minor through their natural guardian/mother
Smt. Vedvati Wd/o late Kirty Pandey

8. Ku. Twinkal D/o late Kirty Pandey, aged about 8 years

9. Ku. Rakhi D/o late Kirty Pandey, aged about 6 years
10. Ku. Rani D/o late Kirty Pandey, aged about 6 years
11. Aditya Kumar S/o late Kirty Pandey, aged about 1 year

Appellants 8 to 11 are minor through their natural guardian/mother
Smt. Lachchhan Wd/o late Kirty Pandey

All above resident of village Bedma, Police Station Keshkal, District
Bastar (CG)

---- Appellants

Versus

1. Tulsiram S/o Chaitram Netam, aged about 25 years, R/o Devdongar,
Police Station Farasgaon, District Bastar (CG)
2. Ahmed Mukhtyar Khan S/o Hazikhan, R/o Tikrapara, Dhamtari,
District Raipur (C.G).
3. United India Insurance Company Limited, Branch Office Stadium
Road, T. P. Nagar, Korba (C.G)

---- Respondents

For Appellants	:	Shri Anurag Singh, Advocate.
For Respondent no.3	:	Shri H. P. Agrawal, senior advocate along with Shri Pankaj Agrawal, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/11/2017

These are two appeals arising out of a common order dated 12.08.2010 passed by the Additional Motor Accident Claims Tribunal (FTC), Kondagaon, District Bastar (CG) in Claim Case Nos. 33/08 and 34/08. The Tribunal vide the impugned order, in Claim Case No.33/08 has awarded a compensation of Rs.1,32,500/- and in Claim Case No.34/08 has awarded a compensation of Rs. 2,31,836/- with interest at the rate of 6% per annum from the date of application in both the cases.

2. So far as MAC No.1116/10 arising out of Claim Case No. 33/08 is concerned, it pertains to the death of one Govind Pandey, aged about 45

years who was working as an agricultural labour at the time of accident. So far as MAC No. 1115/10 arising out of Claim Case No.34/08 is concerned, it pertains to the death of one Kirty Pandey, aged about 35 years who was working as Shiksha Karmi in the State of CG at the time of accident.

3. The challenge to the impugned award in both the appeals is to the finding of contributory negligence given by the Tribunal so also the quantum of compensation being on the lower side in as much as the future prospects not being calculated while computing the compensation so also the multiplier applied and the deductions made being not in accordance with the principles laid down by the Supreme Court in the case of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** and the subsequent decisions. Counsel for the appellants assailing the finding of contributory negligence submits that there is no evidence whatsoever on the basis of which the Tribunal could have reached to the conclusion of the deceased persons contributing in the accident.

4. A perusal of the record it is reflected that there is sufficient evidence brought on record particularly that of AW-2 Bharat Jain who has stated that the deceased persons were standing on the road side near Garka Pool when the Jeep coming from opposite direction crossed side and hit the deceased persons. There is no evidence in rebuttal produced by any of the respondents before the Tribunal to reach to the conclusion of there being a contributory negligence. This Court has no hesitation that the finding of the contributory negligence by the Tribunal is without any basis and evidence and the same therefore deserves to be and is accordingly set aside.

5. So far as the enhancement of compensation in MAC No. 1115/10 is concerned, deceased Kirti Pandey, aged about 35 years was working as Shiksha Karmi at the time of accident and the income assessed by the Tribunal based on the salary slip is Rs.4,218/- which for convenience sake is rounded up to Rs.4,200/-. In the light of the larger Bench decision of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** decided on 31st October, 2017, the claimants would be entitled for income of Rs.50% towards future prospects while computing the compensation. Likewise, the multiplier applied would be 16 and not 13 as assessed by the Tribunal. Similarly, since there were total 11 claimants before the Tribunal, the deductions made would also be 1/5th and not 1/3rd as has been assessed by the Tribunal towards personal expenses. Accepting Rs.4,200/- to be the monthly income of the deceased, if 50% of the said amount is added towards future prospects, the monthly income would come to Rs.6,300/- and the yearly income would be Rs.75,600/- of which if 1/5th is deducted towards personal expenses, the amount would be Rs.60,480. If the said amount is multiplied applying the multiplier of 16, the amount would come to Rs.9,67,680/-. It is ordered that the claimants shall be entitled for Rs.9,67,680/- towards loss of dependency. In the given facts and circumstances of the case, this Court is of the opinion that ends of justice would meet if an amount of Rs.32,320/- is awarded under the conventional head. Thus, the claimants in MAC No. 1115/10 shall be entitled for a total compensation of Rs.10,00,000/- in stead of Rs.2,31,836/- as awarded by the Tribunal.

6. So far as the enhancement of compensation in MAC No. 1116/10 is concerned, deceased Govind Pandey was working as an agricultural labour at the time of accident. Therefore, this Court finds that the income

has rightly been assessed by the Tribunal at Rs.3,000/- per month i.e. Rs.36,000/- a year. Considering the judgment of the Supreme Court in the case of Pranay Sethi (supra), the claimants would be entitled 25% of the income towards future prospects. 25% of Rs.36,000/- if added to the yearly income, it comes to Rs.45,000/- of which if 1/4th is deducted towards personal expenses, the amount would come to Rs.33,750/-. If the said amount is multiplied applying the multiplier of 14, the amount would come to Rs.4,72,500/- It is ordered that the claimants shall be entitled for compensation of Rs.4,72,500/- towards loss of dependency. In addition, under the conventional head, this Court feels that ends of justice would meet if the claimants are awarded a compensation of Rs.27,500/-. Thus, the claimants in MAC No.1116/10 shall be entitled for a total compensation of Rs.5,00,000/- in stead of Rs. 1,32,500/- as awarded by the Tribunal.

7. The enhanced amount in both the appeals shall carry interest at the same rate as has been fixed by the Tribunal. Since the finding of contributory negligence has been set aside by this Court, the claimants shall be entitled for the payment of the entire compensation which shall be paid by the Insurance Company.

8. Both the appeals thus stand allowed.

Sd/-
(P. Sam Koshy)
Judge