NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 1117 of 2010

1. Beena Chatterjee W/o late Gautam Chaterjee, aged about 39 years, R/o village Krishna Nagar, Kerwasheela, PS Ramanujganj, Tehsil Pal, Distt. Surguja (CG).
2. Smt. Sandhya Haldar W/o Shri Pradeep Haldar, R/o Village - Krishna Nagar, Kerwasheela, P.S. - Ramanujganj, District - Surguja C.G.
3. Gokul Chatterjee W/o Late Gautam Chatterjee, Minor Through L.R. Smt. Beena Chaterjee, R/o Village - Krishna Nagar, Kerwasheela, P.S. Ramanujganj, District – Surguja (CG).

---- Appellants

Versus

1. Amit Kumar Shrivastava S/o Umesh Chandra Shrivastava, aged about 30 years (Owner of vehicle) R/o village Namnakala, Near Power House, PS Gandhinagar, Tehsil Gandhinagar, Ambikapur, Distt. Surguja (CG).
2. Deepak Pandey @ Peeyush Pandey S/o Shri Vidyasagar Pandey, aged about 26 years, R/o Department Of Irrigation Ambikapur, District - Surguja & Saheli Gali, Kedarpur, District – Surguja (CG)
3. Manager United India Insurance Company Ltd. Branch - Ambikapur, Near Ram Mandir, District - Surguja C.G.

---- Respondents

For Appellant/Claimants :	Shri N Naha Roy, Advocate.
For respondent/Insurance Co.	Shri HB Agrawal, Sr. Advocate along with Smt. Prabha Sharma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

20.09.2017.

1. The present is an appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation against the award dated 20.07.2010 passed by the Motor Accident Claims Tribunal, Surguja, in Claim Case No.27/2007. Vide the said impugned award, the Tribunal has given a finding of contributory negligence of 50 percent and has awarded compensation of Rs.1,88,000/- after quantifying the compensation at Rs.3,76,000/-.

2. The present is an appeal of the claimants on the ground that since the deceased in the instant case i.e. Gautam Chaterjee, aged around 40 years, was a pillion rider at the time of accident, the finding of contributory negligence awarded by the Tribunal would not be acceptable as it would be a case of composite negligence. Therefore, the deduction of 50 percent of the compensation awarded on account of contributory negligence by the Tribunal is an erroneous finding and the same deserves to be set aside. It was further contended that the income assessed by the Tribunal while quantifying the compensation of Rs.3000/- is on the lower side as the accident is of the year 2007. It was further contended that the Tribunal has not granted compensation under future prospects which also is by now a matter of right which has been decided by a catena of decisions of the Supreme Court and thus prayed for the amount of compensation to be suitably enhanced.
3. Counsel for the respondent-insurance company however opposing the appeal submits that the date of accident in the instant case being of the year, 2007 and at the relevant point of time the income assessed by the Tribunal of Rs.3000/- per month cannot be said to be on lower side and the amount of compensation was just, fair and reasonable. Therefore, the appeal deserves to be rejected.
4. Having considered the rival contentions put forth on either side and on perusal of records, it is by now well settled principle of law that pillion rider cannot be held responsible for contributory negligence for the accident to have occurred. Thus, the finding of the Tribunal in this

regard being unsustainable deserves to be and is accordingly set aside.

5. Now coming to the aspect of enhancement of compensation, if we take into consideration the facts and circumstances of the case, this court has no hesitation in reaching to the conclusion that at the relevant time of accident the minimum income of an unskilled labour also would had been Rs.150/- a day which makes Rs.4500/- per month. Therefore, the Tribunal for all practical purpose ought to have assessed the income of deceased at Rs.4500/- instead of Rs.3000/-. It is ordered accordingly.

6. Further, as per law laid down by the Supreme Court in case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. 2009(6)SCC 121, which has been followed in all subsequent decisions by the Supreme Court as well as by this court considering the age of the deceased, 50 percent of monthly wages should be taken into consideration under future prospects while quantifying the compensation.

7. Accepting Rs.4500/- as monthly income and adding 50 percent of it towards future prospects, the monthly income would be Rs.6750/- and the yearly income would be Rs.81,000/- of which, if 1/3rd is deducted towards personal expenses, the remaining amount would be Rs.54,000/-. If this amount is multiplied by applying the multiplier of 15, the amount would reach to Rs. 8,10,000/-. Thus, it is ordered that the claimants are entitled for compensation for loss of dependency at Rs.8,10,000/-.

8. Further, so far as amount of compensation awarded under conventional head also, this court finds that the amount paid to the claimants is on the lower side and considering the case of the Supreme Court in case of Rajesh & Ors. Vs. Rajbir Singh & Ors., 2013(9) SCC 54, this court is of the opinion that a lump sum compensation of Rs. 1,00,000/-shall make the compensation just and proper. Thus, the claimants shall be entitled for a total compensation of Rs.9,10,000/- instead of Rs.1,88,000/- as awarded by the Tribunal.

9. Considering the facts and circumstances of the case and taking note of the fact that award under challenge is more than 10 years old, this court is of the opinion that ends of justice would meet if the interest payable on the said enhanced amount of compensation is reduced to 6 percent from 9 percent as awarded by the Tribunal. It is ordered accordingly. Rest of the conditions mentioned in the award shall remain intact.

10. The appeal stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

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