

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 1100 of 2004

1. Smt. Shakila Begam, W/o. Late Mohd. Rajjak Aged about 34 years,
 2. Ku. Sabina, D/o. Late Mohd. Rajjak, aged about 12 years,
 3. Mohd. Isrile, S/o. Late Mohd. Rajjak, aged about 10 years,
 4. Mohd. Isrile, S/o. Late Mohd. Rajjak, aged about 6 years,
 5. Mohd. Mustak, S/o. Late Mohd. Gulab, aged about 60 years,
 6. Smt. Halima Begam, W/o. Mohd. Mustak, aged about 57 years,
- Applicant No. 2 to 4 minor through: natural guardian mother Smt. Shakila Begam,
All R/o. Balmukund School Road, Talapara, Sanjay Nagar, Bilaspur (CG)

---Appellants

Versus

1. Bhupendra Kumar Sahu, S/o. Pars Lal Sahu, R/o. Village Bhilai, PS Arang, Distt. Raipur (CG)
2. Smt. Timan Devi Sahu, W/o. Shri Prashant Sahu, R/o. Village Bhilai, Via Arang, Distt. Raipur (CG)
3. National Insurance Company Ltd. Through: Branch Manager Office No.2, Mobin Mahal, G.E. Road, Raipur (CG)

---Respondents

For Appellant	:	Shri A.L.Singroul, Advocate
For Respondent No.3	:	Shri B.N.Nande, Advocates

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/08/2017

1. Present is an appeal filed by the claimants under section 173 of the Motor Vehicle Act seeking enhancement of the compensation. The challenge in the present appeal is to the award dated 07/08/2004 passed by the 3rd Additional Motor Accident Claims Tribunal, Bilaspur in claim case No.08/2003.
2. The relevant facts of the case is that the deceased Mohd. Rajjak, aged 35 years while he was traveling on his Motorcycle bearing registration No. C.G.-07-A-1394 along with pillion rider namely Shri Zamir Ali met with an accident when he was dashed with Jeep bearing registration No. CG-04-B-0633 coming from the opposite direction. Claimants i.e. the widow, minor children and the parents of the deceased had filed claim application under section 166 of the Motor Vehicle Act.

3. The Tribunal taking into consideration the evidence which have come on record held that compensation payable to the claimants would be Rs.6,44,000/-. Further there is a finding of contributory negligence of equal proportion on the part of the deceased and the amount of compensation was made half that is Rs.3,22,000/- along with interest @ 9% per annum from the date of application. It is this award which is under challenge by the claimant seeking for enhancement.
4. It was contended by the counsel for the appellant that finding of the Tribunal in as much as there been contributory negligence is without any sufficient evidence and the said finding also deserves to be set-aside. Enabling the petitioner to receiving entire amount of compensation quantified in addition to the enhanced amount if any.
5. The contentions of the appellant is that the amount of compensation awarded is firstly on the lower side in as much as notional income of Rs.4,500/- as he was earning much more than the notional income which has been accepted by the Tribunal. Likewise it was also contended that the Tribunal has not taken into account the income under the head of future prospects while quantifying the compensation. It was further contended that the amount of deduction made towards personal expenses of $\frac{1}{3}^{\text{rd}}$ also is not proper. As considering total number of claimants, deduction ought to had been $\frac{1}{5}^{\text{th}}$. In addition he has further contended that compensation under the conventional head also is on the lower side and the same needs suitable enhancement.
6. The counsel for the Insurance Company however opposing the appeal submits that, award taking into consideration the evidence which has been led seems to be just and fair and does not warrant any interference and prayed for the rejection of the appeal.
7. Having considered the contentions put forth on either side and on perusal of record this court while considering the issue of contributory negligence first peruses the evidence of Zamir Ali an eyewitness what clearly reflects is that in his deposition he has categorically stated that the deceased was riding motorcycle cautiously and at a slow speed and then suddenly from the opposite direction a Truck came and dashed them. It is further in the deposition of the said Zamir Ali that the driver of the Tempo Trax was

infact driving the said Truck in a rash and negligent manner causing head on collision. In addition no evidence was led on behalf of the Insurance Company to disprove this contention of the eyewitness Zamir Ali the pillion rider with the deceased. Neither is their sufficient evidence from the cross-examination extracted by the Insurance Company to establish the contributory negligence.

8. In the absence of any such strong evidence establishing contributory negligence, the finding of the Tribunal only on assuming the contributory negligence on account of a head on collision is not acceptable and is not tenable also for the purpose of holding the deceased to have been negligent which gave rise to the accident has to be proved and established by the party alleging contributory negligence. In the instant case there is no strong evidence brought on record except for the finding of the Tribunal based on assumption from the deposition of eyewitness. At the same time he has categorically stated that the deceased was driving at a slow speed and was going on the side of the road when they were hit by the Tempo Trax.
9. In view of the same finding of the Tribunal so far as contributory negligence is concerned is without any basis and the same accordingly deserves to be set-aside.
10. As regards of quantum of compensation awarded, since the claimants have not been able to produce any cogent evidence to establishing actual income which the deceased was earning except for the role averment made, this court does not find any error on the part of the Tribunal while accepting notional income of the deceased at Rs.4,500/- and it is ordered that said finding of the Tribunal is proper and justified.
11. However, this court taken into consideration the guidelines as has been laid down by the Supreme Court in the case of **“Sarla Verma & Ors vs Delhi Transport Corp. & Anr” (2009) 6 SCC 121**). and the subsequent decisions has held that, the income under the future prospect also ought to have been added for the purpose of quantifying the income of the deceased. Since the age of the deceased was 35 years, income under the future heads ought to had been 50% of Rs.4500/- which comes to Rs.2250/- and the total

monthly income thus would become Rs.6750/- which would make the yearly income to be Rs.81,000/-.

12. Further, if we taken into account the claimant it would reveal that claimants were the widow and 3 minor children of the deceased in addition to which parents of the deceased making the total number of claimants to be six and applying the ratio as laid down by the Supreme Court in the case of Sarla Verma (Supra), the deduction towards personal expenses has to be $\frac{1}{5}$ th and not $\frac{1}{3}$ rd which would come to Rs.16,200/-. Thus after the said deduction the amount of yearly income would come to Rs.64,800/- which if multiplied by applying multiplier of 17 the amount of compensation payable towards loss of dependency comes to Rs.11,01,600/- which would be the actual loss of dependency on the death of deceased instead of Rs.6,12,000/- as has been quantified by the Tribunal.
13. Likewise compensation payable in the other heads also seems to be lower side considering again judgment of Supreme Court in the case of Sarla Verma (Supra) and so also the judgment of ***“Rajesh and others vs. Rajbir Singh and others” (2013(9) SCC 54)*** this Court is of the opinion that a lump sum compensation of Rs.1,00,000/- would be more appropriate and is accordingly ordered under other conventional head. The claimants shall be entitled for lump sum compensation of Rs.1,00,000/- instead of Rs.32,000/- as has been awarded by the Tribunal making total amount of compensation payable to the claimants at Rs.12,01,600/-.
14. Appeal is accordingly allowed. It is held that the claimants shall be entitled for total compensation awarded of Rs.12,01,600/- finding of the Tribunal under the contributory negligence stands set-aside. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. Rest of the conditions imposed by the Tribunal shall remain intact.
15. Thus appeal stands allowed to the aforesaid extent.

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