

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1528 of 2008**

1. Ku. Kiran Verma, age about 02 years, D/o late Rajkumar Verma
2. Kumesh Kumar Verma, age about 01 years S/o late Rajkumar Verma
3. Kamini Bai Wd./o late Rajkumar Verma, aged about 24 years

Appellants 1 & 2 are minor through guardian mother Smt. Kamin Bai,

All of them are at present resident of Vill. Botepar, PS Gumka, Tah.
And Dist. Rajnandgaon (CG)

---- Appellants**Versus**

1. Balram Singh Yadav, age about 46 years, S/o Jagdish Yadav, Occupation Driver, R/o village Khamariya, P.S. Khamariya, District Durg (CG)
2. Bhavesh Agrawal S/o Rajendra Agrawal, R/o Old Civil Line behind Mishra Chal, Rajnandgaon, District Rajnandgaon (CG)
3. New India Insurance Co. Ltd. through Branch Office Kamthi Line, Rajnandgaon, District Rajnandgaon (CG)
4. Mahendra Jain S/o Mangilal Jain R/o Old Bus Stand Road, PS Khairagarh, District Rajnandgaon (CG)
5. Smt. Jalkaina Bai W/o Khemlal Verma R/o Nagpur (M.H) Presently Residing at Vill. Muteda Nawagaon, PS Khairagarh, District Rajnandgaon (CG)
6. Khemlal Verma S/o Bhikhari Lal Verma R/o Nagpur (M.H) Presently Residing at Vill. Muteda Nawagaon, PS Khairagarh, District Rajnandgaon (CG)

---- Respondents

For Appellants	:	Shri Rakesh Thakur, Advocate
For Respondent no. 3	:	Shri Sourabh Sharma, Advocate
For Respondent no. 4	:	Shri Parag Kotecha, Advocate
For Respondents 5 & 6	:	Shri Roop Naik, Advocate

Misc. Appeal (C) No. 76 of 2009

1. Gendlal Chandrakar S/o Shri Lakhan Lal Chandrakar, aged about 48 years
2. Ramkali W/o Shri Gnedlal Chandrakar, aged about 45 years

Both are resident of Amlipara, Khairagarh, Tahsil Khairagarh, District Rajnandgaon (CG)

---- Appellants

Versus

1. Balram Singh Yadav, aged about 46 years, S/o Jagdish Yadav, R/o village Khamhariya, P.S. Khamhariya, District Durg (CG) (Driver)
2. Bhavesh Agrawal S/o Rajendra Prasad Agrawal, R/o Civil Line behind Mishra Chal, Rajnandgaon, District Rajnandgaon (CG)
3. Mahendra Jain S/o Mangilal Jain R/o Old Bus Stand Road, PS Khairagarh, District Rajnandgaon (CG)
4. New India Insurance Co. Ltd. through the Branch Manager, Kamthi Line, Rajnandgaon, District Rajnandgaon (CG)

---- Respondents

For Appellants	:	Shri Roop Naik, Advocate
For Respondent no. 3	:	Shri Parag Kotecha, Advocate
For Respondent no.4	:	Shri Sourabh Sharma, Advocate

Misc. Appeal (C) No. 81 of 2009

1. Smt. Jalkena Bai, aged about 46 years, W/o Shri Khemlal Verma
2. Khemlal, aged about 48 years, S/o Bhikhari Lal Verma

Both are resident of Muteda Navagaon, PS Khairagarh, Tahsil Khairagarh District Rajnandgaon (CG)

---- Appellants

Versus

1. Balram Singh Yadav, aged about 46 years, S/o Shri Jagdish Yadav, R/o village Khamhariya, P.S. Khamhariya, District Durg (CG) (Driver)

2. Bhavesh Agrawal S/o Shri Rajendra Prasad Agrawal, R/o Civil Line behind Mishra Chal, Rajnandgaon, District Rajnandgaon (CG) (Owner)
3. Mahendra Jain S/o Mangilal Jain R/o Old Bus Stand Road, PS Khairagarh, District Rajnandgaon (CG)
4. Kamini Bai Wd./o late Rajkumar Verma, Resident of village Botepar, PS Ghumka, Tah. and Dist. Rajnandgaon (CG)
5. Ku. Kiran Verma D/o late Rajkumar Verma, aged about 2 years, minor through her natural guardian mother Smt. Kamin Ba Wd/o late Rajkumar Verma, Resident of village Botepar, PS Ghumka, Tah. and Dist. Rajnandgaon (CG)
6. New India Insurance Co. Ltd. through the Branch Manager, Kamthi Line, Rajnandgaon, District Rajnandgaon (CG)

---- Respondents

For Appellants	:	Shri Roop Naik, Advocate
For Respondent no. 3	:	Shri Parag Kotecha, Advocate
For Respondents 4 & 5	:	Shri Rakesh Thakur, Advocate
For Respondent no.6	:	Shri Sourabh Sharma, Advocate

Misc. Appeal (C) No. 1527 of 2008

Mahendra Jain S/o Mangilal Jain, aged about 26 years, R/o Old Bus Stand Road, PS Khairagarh, District Rajnandgaon (CG)

---- Appellant

Versus

1. Ku. Kiran Verma D/o late Rajkumar Verma, aged about 2 years, minor through mother Smt. Kamin Bai Wd/o late Rajkumar Verma, Resident of village Botepar, PS Ghumka, Tah. and Dist. Rajnandgaon (CG)
2. Kumesh Kumar Verma S/o late Rajkumar Verma, age about 01 month, minor through mother Smt. Kamin Bai Wd/o late Rajkumar Verma, Resident of village Botepar, PS Ghumka, Tah. and Dist. Rajnandgaon (CG)
3. Kamini Bai Wd./o late Rajkumar Verma, aged about 24 years, Resident of village Botepar, PS Ghumka, Tah. and Dist. Rajnandgaon (CG)

4. Smt. Jalkaina Bai W/o Khemlal, aged about 46 years, R/o village Muteda Navagaon, PS Khairagarh, District Rajnandgaon (CG)
5. Khemlal S/o Bhikhari Lal Verma, aged about 48 years, R/o village Muteda Nawagaon, PS Khairagarh, District Rajnandgaon (CG)
6. Balram Singh Yadav, aged about 46 years, S/o Shri Jagdish Yadav, R/o village Khamhariya, P.S. Khamhariya, District Durg (CG) (Driver)
7. Bhavesh Agrawal S/o Shri Rajendra Prasad Agrawal, R/o Old Civil Line behind Mishra Chal, Rajnandgaon, District Rajnandgaon (CG) (Owner)
8. The New India Insurance Co. Ltd. through Branch Manager, Kamthi Line, Rajnandgaon, District Rajnandgaon (CG)

---- Respondents

For Appellant	:	Shri Parag Kotecha, Advocate
For Respondents 1 to 3	:	Shri Rakesh Thakur, Advocate
For Respondents 4 & 5	:	Shri Roop Naik, Advocate
For Respondent no.8	:	Shri Sourabh Sharma, Advocate

Misc. Appeal (C) No. 1530 of 2008

Mahendra Jain S/o Mangilal Jain, aged about 26 years, R/o Old Bus Stand Road, PS Khairagarh, District Rajnandgaon (CG)

---- Appellants

Versus

1. Gendlal Chandrakar S/o Shri Lakhan Lal Chandrakar, aged about 48 years
 2. Ramkali W/o Shri Gnedlal Chandrakar, aged about 45 years
- Both are resident of Amlipara, Tahsil Khairagarh, District Rajnandgaon (CG)
3. Balram Singh Yadav, aged about 46 years, S/o Shri Jagdish Yadav, R/o village Khamhariya, P.S. Khamhariya, District Durg (CG) (Driver)
 4. Bhavesh Agrawal S/o Shri Rajendra Prasad Agrawal, R/o Old Civil Line behind Mishra Chal, Rajnandgaon, District Rajnandgaon (CG) (Owner)
 5. The New India Insurance Co. Ltd. through Branch Manager, Kamthi Line, Rajnandgaon, District Rajnandgaon (CG)

---- Respondents

For Appellant	:	Shri Parag Kotechas, Advocate
For Respondent no. 5	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

08/11/2017

These are five appeals arising out of 3 different set of claim cases i.e. Claim Case Nos. 120/07, 121/07 & 122/07 decided on the same date i.e. on 31.07.08 by the Motor Accident Claims Tribunal, Rajnandgaon (CG). Claim Case Nos. 120/07 and 122/07 are in connection with the death of Raj Kumar Verma. The claimants in Claim Case No. 120/07 are the parents and the claimants in Claim Case No. 122/07 are the widow and the children of the deceased Rajkumar Verma. Both these claim cases were clubbed together and decided by a common order. Claim Case No. 121/07 is in connection with the death of Alok Chandrakar and the claimants in the said case are the parents of the deceased.

2. The Tribunal vide impugned award, in Claim Case No. 120/07 & 122/07, has awarded a compensation of Rs. 1,31,800 and has apportioned the compensation between the parents and the widow & children by granting Rs.20,000/- to the parents and Rs.1,11,800/- to the widow and children. In Claim Case No. 121/07, the Tribunal has awarded a compensation of Rs.88,000/- in connection with the death of Alok Chandrakar.

3. MAC Nos. 1528/08, 76/09 & 81/09 are the appeals filed by the respective claimants seeking for enhancement of compensation. MAC Nos. 1527/08 & 1530/08 are the appeals filed by the owner of the Maruti car involved in the accident bearing registration No. CG08/5159.

4. While passing the impugned award the Tribunal has reached to the conclusion that there is an element of contributory negligence on the part of the deceased persons attributing the accident and that the negligence has been fixed at 70% on the driver of the offending bus bearing registration No. CG04 J 0631 and 30% has been saddled on the driver of the Maruti car involved in the accident.

5. The appeals filed by the owner of the Maruti car i.e. MAC Nos. 1527/08 & 1530/08 are assailing the finding of contributory negligence to the extent of 30%.

6. Counsel for the appellant in the two appeals filed by the owner of the Maruti car submits that the finding arrived at by the Tribunal is erroneous in as much as there is no sufficient material to show the negligence on the part of the persons driving the Maruti car. There is also no evidence on record to show that one of the deceased was driving the Maruti car at the time of accident rather the record of the Criminal case shows that the Maruti car at the time of accident was being driven by one Manish Yadav who had also expired from the same accident. He submits that in the instant case, since there was no evidence regarding deceased Raj Kumar Verma and Alok Chandrakar driving the car, it would be a case of them being the occupants in the car. As such it could be a case of composite negligence not a case of contributory negligence and therefore, the holding of the driver of Maruti car being negligent to the extent of 30% deserves to be set aside.

7. So far as the claimants appeal for enhancement of compensation is concerned, they too have challenged the finding of contributory negligence and also have assailed the impugned award on the ground that the income assessed and the compensation awarded is unreasonably low and the same

deserves to be enhanced suitably considering the date of accident and the minimum income which a person could have earned during the said period.

8. So far as the issue of the finding of contributory negligence is concerned, this Court on perusal of the record and the impugned award is not able to understand as to on what basis the Tribunal has reached to the finding of there being a contributory negligence. No substantive evidence has been brought on record by any of the respondents to show that there was an element of negligence on the part of the deceased persons attributing the accident. Further there is also no sufficient material on the basis of which the Tribunal could reach to the conclusion that the Maruti car was being driven by deceased Raj Kumar Verma, rather the criminal case record which was produced before the Tribunal would show that at the time of accident, the Maruti Car was being driven by one Manish Yadav not Raj Kumar Verma. Thus, the finding of contributory negligence arrived at by the Tribunal deserves to be and is accordingly set aside.

9. The said finding of this Court stands fortified from the decision of the Supreme Court in the case of **T. O. Anthony Vs. Karvarnan and other** reported in **(2008) 3 SCC 748**. In view of the finding of contributory negligence being set aside by this Court, the two appeals i.e. MAC Nos. 1527/08 & 1530/08 filed by the owner of the Maruti car deserve to be and are accordingly allowed.

10. So far as the appeals of the claimants seeking for enhancement of compensation are concerned, the claimants have claimed that the deceased persons at the time of accident were earning Rs.3,000/- a month.

11. Taking into account the period of accident i.e. 24.12.2005 this Court has no hesitation in accepting the said contention of the claimants for the reason that at the relevant point of time even an unskilled labour would have been

earning more than Rs.100/- a day i.e. Rs.3,000/- a month. Therefore, this Court accepts the contention of the claimants and assesses the income of the deceased persons at Rs.3,000/- a month i.e. Rs.36,000/- yearly and proceeds to quantify the compensation accordingly.

12. So far as the appeals filed by the widow, children and the parents of deceased Raj Kumar Verma i.e. MAC No. 1528/08 and 81/09 arising out of Claim Case Nos. 122/07 and 120/07 respectively are concerned, accepting Rs.36,000/- as yearly income, if 40% of the same is added towards future prospects, the amount comes to Rs.50,400/-. Considering the number of dependents to be 5, the deductions to be made for personal expenses would be $\frac{1}{4}$ th which would bring the amount to Rs.37,800/-. If this amount is multiplied applying the multiplier of 17, the amount would come to Rs.6,42,600/-. In addition, the claimants shall also be entitled for compensation of Rs.70,000/- under the conventional head. Thus, the total amount of compensation payable would be Rs.7,12,600/- in stead of Rs.1,31,800/- as awarded by the Tribunal. So far as the apportionment of the compensation is concerned, this Court orders that the widow and the children i.e. the appellants in MAC No.1528/08 shall be entitled for a compensation of Rs.5,12,600/- with interest as assessed by the Tribunal and the parents i.e. the appellants in MAC No.81/09 shall be entitled for rupees one lakh each totaling Rs.2,00,000/- with interest at the same rate as has been awarded by the Tribunal.

13. Thus, MAC Nos. 1528/08 and 81/09 stand allowed.

14. So far as the appeal filed by the parents of deceased Alok Chandrakar i.e. MAC No. 76/09 arising out of Claim Case No.121/07 is concerned, this Court again assesses the minimum income of the deceased at Rs.3,000/- a month i.e. Rs.36,000/- yearly and proceeds to quantify the compensation

accordingly. If 40% of the same is added towards future prospects, it would make the yearly income at Rs.50,400/- of which if $\frac{1}{2}$ is deducted towards personal expenses, the amount would come to Rs.25,200/-. If this amount is multiplied applying the multiplier of 18, the amount would come to Rs.4,53,600. In addition, the claimants shall also be entitled for an amount of Rs. 70,000/- under the conventional head. Thus, the total compensation payable to the appellants in MAC No. 76/09 would become Rs. 5,23,600/- in stead of Rs.88,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

15. Thus, MAC No.76/09 stands allowed.

16. The liability of payment of entire compensation shall be upon the New India Insurance Co. Ltd.

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