

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 502 of 2009**

1. Smt. Ambika Verma, aged about 30 years, widow of late Krishna Kumar Verma, R/o village Pond, Post Abhanpur, Block & Tahsil Abhanpur, District Raipur (CG)
2. Ku. Onika Verma (Minor), aged about 7 years, daughter of late Krishna Kumar Verma, through her natural guardian Smt. Ambika Verma Wd./o late Krishna Kumar Verma, R/o village Pond, Post Abhanpur, Block & Tahsil Abhanpur, District Raipur (CG)
3. Ku. Prerana Verma (Minor), aged about 5 years, daughter of late Krishna Kumar Verma, through her natural guardian Smt. Ambika Verma Wd./o late Krishna Kumar Verma, R/o village Pond, Post Abhanpur, Block & Tahsil Abhanpur, District Raipur (CG)
4. Smt. Jamuna Bai Verma, aged about 65 years, wife of Shri Ramkaran Verma, R/o village Pond, Post Abhanpur, Block & Tahsil Abhanpur, District Raipur (CG)
5. Ramkaran Verma, aged about 70 years, S/o late Mansharam Verma, R/o village Pond, Post Abhanpur, Block & Tahsil Abhanpur, District Raipur (CG)

---- Appellants**Versus**

1. Tilakram Sen, aged about 25 years, son of Shri Ramswarup Sen, resident of Shitalapara, Nawapara, Police Station Gobara Nawapara, District Raipur (CG) (Driver of the offending vehicle)
2. Banshilal Yadav S/o Shri Ramchand Yadav, resident of Bagdehipara, Jagriti Chauk, Nayapara, Rajim, Distt.-Raipur(CG)
3. The New India Insurance Company Limited through Regional Manager, Madina Building, Jail Road, Raipur(CG)

---- Respondents

For Appellants	:	Shri Shikhar Sharma, Advocate
For Respondent no.1	:	Shri Ravi Maheshwari, Advocate
For respondent no.3	:	None

Hon'ble Shri Justice P. Sam Koshy**Order On Board****20/09/2017**

Present is an appeal by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 17.12.2008 passed by the 12th Additional Motor Accident Claims Tribunal (FTC), Raipur in Claim Case No. 52 of 2008. Vide the impugned award the Tribunal has awarded a compensation of Rs.10,38,000/- but at the same time giving a finding of contributory negligence of 50%, the amount payable to the claimant was reduced by 50% to Rs.5,19,000/- with interest @ 7.5% per annum from the date of application. It is this award which has been challenged by the appellants.

2. The grounds of challenge to the impugned award are: i) the finding of the contributory negligence is bad in law, ii) the multiplier applied is also not in accordance with the ratio of law laid down by the Supreme Court in the Case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** iii) the deductions made towards personal expenses should have been 1/4th in stead of 1/3rd as the total number of claimants are five and iv) the Tribunal has not considered the future prospects while quantifying the compensation.

3. So far as the contributory negligence is concerned, counsel for the appellant submits that there is a statement of AW-2, the eye witness Kishore Kumar who has deposed before the Tribunal that he was also travelling on the same road and found that the offending vehicle i.e. the mini bus belonging to respondent no.2 and driven by respondent no.1 parked on the middle of the road and that there was no indication of parking light given to show that it was stationary. It was contended that this parking of the mini bus by respondent no.1 on the middle of the road with no indication resulted in the accident as it was 6.30 p.m. in the month of December and the deceased could not see the

truck being halted/parked on the middle of the road. He further contended that it is a case where the driver of the offending vehicle was also for his negligence charged, apart from other offences for the offence under Section 287 of IPC which shows that it was the negligence on the part of the driver of the mini bus which led to the deceased dash against the mini bus while riding the motorcycle.

4. Having considered the contentions put forth by the counsel for the appellants and on perusal of the record this Court is of the opinion that only because the accident occurred when the deceased was riding the motorcycle dashing the backside of the mini bus by itself cannot be presumed of there being a contributory negligence. The said finding of the Tribunal appears to be without any base only on the presumption and the same cannot be accepted, particularly for the reason that the eye witness who has been examined before the Court has deposed that if the driver of the mini bus had not parked his vehicle on the middle of the road that too without any parking light or indication, the accident could have been avoided. Since no substantial cross examination has been made to the aforesaid witness, the evidence of the eye witness ought to have been accepted by the Tribunal. Thus, the finding of contributory negligence is not sustainable and the same is accordingly set aside. It is held that the claimants shall be entitled for the entire amount of compensation awarded with no deductions.

5. As regards the calculation of compensation, considering the fact that at the time of accident the deceased was aged around 32 years, as per decision of the Supreme Court in the case of Sarla Verma (Supra), the multiplier of 16 should have been applied in stead of 14 as assessed by the Tribunal. It is ordered accordingly. Further, considering the age of the deceased, 50% of his monthly income was also liable to be added towards future prospects. Likewise, since the total number of claimants was more than 4, applying the

principle laid down by the Supreme Court in the case of Sarla Verma, the deductions towards personal expenses under such circumstances would be 1/4th in stead of 1/3rd as has been assessed by the Tribunal.

6. Thus, accepting the monthly income of the deceased at Rs.9,000/- a month as has been assessed by the Tribunal if 50% of which is added towards future prospects, the amount comes to Rs.13,500/- a month and Rs.1,62,000/- yearly. From the said amount if 1/4th is deducted towards personal expenses, the amount would be Rs.1,21,500 which if multiplied by applying the multiplier of 16, the amount comes to Rs.19,44,000/- towards the loss of dependency. So far as the compensation under conventional head is concerned, this Court is of the opinion that keeping in view the ratio of law laid down by the Supreme Court in the case of **Rajesh and Others vs. Rajbir Singh and others** reported in **(2013) 9 SCC 54**, a lump sum compensation of Rs.1,00,000/- shall meet the ends of justice in stead of Rs.30,000/- as awarded by the Tribunal. Thus, the total compensation payable to the claimants shall be Rs.20,44,000/- in stead of Rs.10,38,000/- as assessed by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal. The claimants shall be entitled for the entire amount of compensation as the finding of contributory negligence of the Tribunal stands set aside.

7. The appeal thus stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE