

HIGH COURT of CHHATTISGARH, BILASPUR**Misc. Appeal No. 1112 of 2004****Smt. Suman Mohta & Others****Versus****P. Chandrashekhar & Others**

For Appellants	:	Shri SS Rajput, Advocate.
For respondents 2	:	Shri Malay Kumar Bhaduri, Advocate.
For respondent No.4	:	Shri Goutam Khetrapal, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****16/08/2017**

1. This is claimant's appeal under Section 173 of the Motor Vehicles Act challenging the award dated 03.08.2004 passed by the Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.10/2002. Vide the said award, the Tribunal in a claim application of the claimants preferred under Section 166 of the Motor Vehicles Act has awarded compensation of Rs.8,07,085/-. However, while imposing the liability, the Tribunal reached to the conclusion that there was an element of contributory negligence on account of which the accident arose and thus held percentage of contributory negligence on the part of the deceased at 40 percent and thus fastened the liability of compensation upon the other respondents jointly and severally at 60 percent.
2. The contention of counsel for the appellants is that the finding of the Tribunal so far as there being contributory negligence is concerned, there is no specific evidence led by any of the respondents to prove the

negligence on the part of the deceased. It was also the contention of the appellants that the finding of the Tribunal was based on assumption and presumption without there being any cogent evidence of any independent witness establishing the negligence on the part of the deceased. Further, the Tribunal has not taken into consideration the income under the future prospects for the purpose of quantifying the compensation. So also the amount of compensation granted under other heads is concerned, the same of Rs. 20,000/- is too meager and deserves enhancement. Likewise, the compensation under the funeral expenses of Rs.10,000/-also deserves enhancement.

3. Counsel for the respondents however opposes the appeal and submits that the award passed by the Tribunal is just and reasonable and the same does not warrant any interference inasmuch the award is based upon the evidence which have come on record.
4. Having heard the rival contentions put forth on either side and on perusal of records what is relevant for consideration is the evidence of eyewitness to applicant witness-Sushant Ghosh, who has in very categorical terms deposed before the Tribunal that the Tanker Truck was coming in a very high speed and in the process had hit the Car belonging to Rakesh Ratan, the deceased. It was further deposed by the same witness that the vehicle of the deceased was on the left side of the road. The only assumption which has been drawn by the Tribunal for contributory negligence is the fact that there was a head on collision and which according to Tribunal could have occurred only on account of negligence of two vehicles involved in the accident. Apart from this assumption, there is no other evidence on record.

5. Further, what is also apparent is the fact that none of the respondents have led any evidence to establish the contributory negligence part. One should not lose sight of the fact that head on collision can also occur if the vehicle coming from opposite direction cross the road and comes on the wrong side and hit the vehicle on the left side. No such evidence is on record to hold that there was some element of negligence either in the travelling or on the location of the vehicle of the deceased with which it could be inferred that there was an element of contributory negligence.
6. In view of the aforesaid facts, the award of the Tribunal so far as there being contributory negligence is concerned, the same is not sustainable and deserves to be and is accordingly set aside.
7. So far as enhancement of compensation is concerned, indisputably the deceased was a salaried person and as per his income tax return itself the income has been assessed. Therefore, the Tribunal has also erred inasmuch as not taking into account the income from future prospects while quantifying the compensation.
8. Therefore, considering the age of the deceased at the relevant point of time and the guidelines laid down by the Supreme Court in case of Sarla Verma and Others Vs. Delhi Transport Corporation & Anr. 2009 (6)SCC 121 as also subsequent decisions of the Supreme Court, the future income to be considered for quantifying the compensation would be 50 percent in the event if the age of the deceased is less than 40 years. In the instant case, the income assessed by the Tribunal is Rs.1,18,689/- and if 50 percent of it i.e. Rs.59,345/- is added on it, the amount would come to Rs.1,78,034/-of which if 1/3rd is deducted towards personal

expenses, the net yearly income would be Rs.1,18,689/-. If the same is multiplied with the multiplier of 17 as has been applied by the Tribunal, the amount of compensation payable towards loss of dependency would be Rs.20,17,713/-instead of Rs.13,45,142/-as awarded by the Tribunal.

9. So far as compensation under the other heads are concerned, taking into account the decision of Supreme Court in the recent past, this court is of the opinion that the amount of Rs.30,000/- awarded by the Tribunal under the other heads in a death case is definitely on the lower side and the same also deserves to be and is accordingly enhanced by a lump sum compensation of Rs.1,00,000/-. Thus, the total compensation payable to the claimants would be Rs.21,17,713/- instead of Rs.8,07,085/- as awarded by the Tribunal. It is ordered accordingly.

10.It is ordered that the respondents No.1 to 4 shall jointly and severally liable for payment of aforesaid enhanced compensation. The liability of payment would fall upon the respondent No.4-National Insurance Company Ltd. So far as the liability of National Insurance Co. Ltd. is concerned, the same stands finalized as the National Insurance Co. Ltd. itself had preferred an appeal on an earlier occasion before this court vide MA No.1064 of 2004 which was dismissed by the Division Bench of this court on 26.10.2010 and as such the liability of payment of compensation is concerned, the same would rest upon the respondent No.4-National Insurance Co. Ltd.

11. With the aforesaid observations, the appeal stands allowed to the above extent.

Sd/-
(P. Sam Koshy)
Judge