

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 468 OF 2011

1. Smt. Triveni Sahu, W/o Late Shri Kumar Sahu, aged about 40 years, occupation-housewife
2. Ku. Asha Sahu, D/o Late Shri Kumar Sahu, aged about 22 years
3. Ku. Anita Sahu, D/o Late Shri Kumar Sahu, aged about 20 years
4. Vickky Sahu, S/o Late Shri Kumar Sahu, aged about 18 years
5. Minor Ku. Vinita Sahu, D/o Late Shri Kumar Sahu, aged about 16 yrs
6. Minor Ku. Sangeeta Sahu, D/o Late Shri Kumar Sahu, aged 7 years
7. Smt. Rambai Sahu, W/o Late Shri Itwari Ram Sahu, aged 70 years
(Appellant No. 5 to 6 being minor through their legal guardian mother appellant no.1 Smt. Triveni Sahu)

All R/o B.T.I. Road, in front of Electricity Office, Mahasamund, Police Station, Tahsil and District Mahasamund (C.G.)

... Appellants

versus

1. Mukesh Kumar Jahire, S/o Bhajan Lal Jahire, aged about 25 years, R/o Police Line, near Police Station Baghbahara, Police Station-Baghbahara, Tahsil & District- Mahasamund (C.G.) (Driver of Vehicle Truck bearing registration no. CG04-ZC-2520)
2. M/s Manglam Trader, Labhrakhurd, Mahasamund, District Mahasamund (C.G.), present R/o Rice Mill, Village- Parsada, Post-Bemcha, District Mahasamund (C.G.) (registered owner of vehicle truck bearing registration no. CG04-ZC-2520)
3. The Reliance General Insurance Company Limited, through Branch Manager, Branch Office, Shop No. 412/413, Ravi Bhawan, 4th Floor, G.E. Road, Jaistambh Chowk, Raipur, Tahsil and District- Raipur (C.G.) (Insurer of vehicle Truck bearing registration no. CG04-ZC-2520)

... Respondents

For Appellants	:	Mr. Shivendu Pandya, Advocate.
For Respondent No.3	:	Mr. Sourabh Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/11/2017

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, assailing the award dated 17.9.2010 passed by the Motor Accident Claims Tribunal, Mahasamund, in Claim Case No. 40/2010.
2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.3,92,000/- to the claimants after assessing contributory negligence on the part of the deceased and the percentage of contributory negligence assessed was 50%.

3. Learned counsel for the appellants assailing the award submits that firstly the finding of the learned Tribunal to the extent of assessing the contributory negligence against the deceased is erroneous and bad in law and the same deserves to be set aside. He submits that there is no evidence on record with which the learned Tribunal could have reached to such conclusion. He further submits that a plain reading of the finding of the Tribunal would by itself reveal that it is only an assumption and presumption which has been drawn by the learned Tribunal without any strong basis. He next submits that it is a case where the deceased was travelling on a bicycle and was hit by a Truck and it cannot be imagined that the deceased could have contributed for the accident to have occurred. He thus prayed for a suitable modification of the award.

4. So far as the compensation is concerned, learned counsel for the appellants submits that the compensation awarded is on the lower side as the income assessed is not correct inasmuch as the income ought to had been Rs.7,815/- per month instead of Rs. 7,725/- as assessed by the learned Tribunal. According to the learned counsel for the appellants, the income towards the Group Insurance Scheme also would be part of the monthly income, which has not been considered by the Tribunal.

5. Learned counsel for the appellants further submits that the multiplier applied by the Tribunal is also not proper and that the Tribunal has also not considered the income under the future prospects while computing the compensation. Likewise, considering the total number of dependants/ claimants, the deduction ought to had been 1/5th instead of 1/3rd as has been assessed by the Tribunal.

6. Learned counsel for respondent no.3-insurance company however opposing the appeal submits that the finding of the learned Tribunal is based on the evidence which have come on record and the Tribunal has

also given reasons for attributing the contributory negligence and thus prayed for the rejection of the appeal.

7. Having heard the contentions put forth on either side and on perusal of record, it is found that the finding of contributory negligence is only on assumption and presumption without there being any strong basis and the same is thus not sustainable and is accordingly set aside.

8. So far as the income is concerned, the argument of the learned counsel for the appellants does have force and therefore it is ordered that the income of the deceased has to be accepted as Rs.7,815/- instead of Rs.7,725/- as assessed by the learned Tribunal.

9. Accordingly, assessing the monthly income at Rs. 7,815/- if we add 30% i.e. Rs. 2,345/- towards the future prospects, the amount would come to Rs. 10,160/- a month and Rs. 1,21,920/- yearly. If 1/5th of Rs.1,21,920/- (that comes to Rs.24,384/-) is deducted towards the personal and living expenses, the net figure would become Rs.97,536/-. If the said amount of Rs.97,536/- is multiplied applying the multiplier of 13, considering the age of the deceased, the amount which comes to Rs. 12,67,968/- is the loss of dependency. Further, keeping in view the recent decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi & Others**¹, this Court quantifies the compensation under the conventional heads at Rs.70,000/-. Thus, the total claim amount payable to the claimants would be Rs.13,37,968/- which for convenience is rounded off at Rs.13,38,000/-.

10. It is accordingly ordered that the claimants shall be entitled for a total compensation of Rs.13,38,000/- instead of Rs. 3,92,100/- which was quantified by the learned Tribunal. The enhanced amount shall also carry interest at the same rate as has been imposed by the learned Tribunal. It is

1 SLP (Civil) No. 25590 of 2014, decided on 31.10.2017

made clear that the claimants shall be entitled for the entire compensation as the finding of contributory negligence stands set aside/quashed.

11. The appeal stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/