

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.471 of 2010

1. Kasli Bai Wd/o Late Babulal Singh Dhurve, aged about 35 years, Occupation Housewife.
2. Ku.Panchmani D/o Late Babulal Singh Dhurve, aged about 08 years, Minor.
3. Ku.Krishna D/o Late Babulal Singh Dhurve, aged about 05 years, Minor.

Appellant No.2 & 3 are Minors, through their natural grardian mother Kasli Bai Wd/o Late Babulal Singh Dhurve.

All are R/o village Chapda, Police Station Odgi, Tahsil Surajpur, District Surguja (C.G).

---Appellants

Versus

1. Ashok Singh S/o Basant Gond, aged about 20 years, R/o village Pal Danauli, P.S. and Post Odgi, District Surguja (C.G).
2. Ram Prasad S/o Jaisai, aged about 40 years, Occupation Agriculture, R/o village Pal Danauli, P.S. and Post Odgi, District Surguja (C.G).
3. The Oriental Insurance Company Limited, through the Branch Manager, the Oriental Insurance Company Ltd., Branch Office Manendragarh Road, Ambikapur (Near Ambedkar Chowk), District Surguja (C.G).

---Respondents

For Appellants	:	Shri Atanu Ghosh, Advocate
For respondent Nos. 1 & 2	:	Shri Sanjay Agrawal, Advocate
For respondent No.3/ Insurance Company	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/10/2017

1. Present is an appeal preferred by the claimants under Section 173 of the Motor Vehicle Act seeking enhancement of the award dated 13/01/2010 passed by the Second Additional Motor Accident Claims Tribunal, F.T.C., Surajpur, District Surguja (C.G.) in Claim Case No.67/2006. Vide the said impugned award, the Tribunal in a Claim Case under Section 166 of the Motor Vehicle Act has awarded compensation of Rs.2,25,500/- along with interest @ 7.5% per annum.

2. The counsel for the appellants submits that, it is a case where the Tribunal has wrongly given the finding of their being contributory negligence on the part of the deceased for the accident to occur and therefore the said finding deserves to be set aside/quashed. It was also contended that, the amount of compensation awarded by the Tribunal was on the lower side in as much as the income assessed by the Tribunal was also on the lower side so also the multiplier applied was not in accordance to the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009 {6} SCC 121]*** and prayed for the award to be suitably enhanced.
3. The counsel for the Insurance Company submits that, the finding of the Tribunal is based upon the evidence which have come on record and therefore the same does not warrant any interference.
4. So far as the contention of the Tribunal having wrongly given the finding of contributory negligence, considering the evidence which have come on record particularly that of the pillion rider as also the statement of Shri Ashok Singh – the driver of the Motorcycle coming from the opposite direction this court is of the opinion that, the Tribunal has rightly applied the principles of Res ipsa Locuiter while giving the finding of contributory negligence and in the opinion of this court it does not warrant any interference as no strong case has been brought before this court by the counsel for the appellants to take a different view. Therefore, the said ground of the counsel for the appellants stands negated.
5. So far as the quantum part is concerned, considering the rival contentions put forth on either side and on perusal of record this court is of the opinion that, the amount of income assessed by the Tribunal at Rs.4,000/- considering the period of the death i.e. year 2005 it is slightly

on the lower side. During the said period, the minimum income of even an unskilled labour would be Rs.150/- per day which makes monthly income at Rs.4,500/-. It is ordered accordingly that for the purpose of quantifying the compensation, the income of the deceased has to be accepted at Rs.4,500/- instead of Rs.4,000/- as assessed by the Tribunal.

6. It is also found that, the Supreme Court in the case of Sarla Verma (Supra) has laid down the principles so far as multiplier to be applied and in the case where the person is aged between 41-45, multiplier to be applied would be 14 which in the instant case, the Tribunal has assessed at 13. It is ordered accordingly that the multiplier to be assessed would be 14 and not 13.

7. Likewise as has been held by the Supreme Court in the case of Sarla Verma (Supra), the income under the future prospects also has to be born in mind while quantifying the compensation. Considering the age of the deceased, it would be 30% of his monthly income which would be added towards future prospects. Thus, if Rs.4,500/- is accepted as the monthly income and adding 30% towards future prospects, the figure would come to Rs.5,850/- per month and Rs.70,200/- yearly of which if 1/3rd is deducted towards personal expenses, the amount would become Rs.46,800/- which if multiplied by applying multiplier of 14, the amount would reach to Rs.6,55,200/-. It is ordered accordingly that the compensation towards loss of dependency would come to of Rs.6,55,200/-

8. Accepting the contributory negligence at 50% as assessed by the Tribunal, the claimants shall be entitled for 50% of the amount towards loss of dependency i.e. Rs.3,27,600/- instead of Rs.2,25,500/- as assessed by the Tribunal. In addition to this amount of Rs.3,27,600/-, the

claimants shall also be entitled for a lump sum compensation of Rs.1,00,000/- under the conventional head instead of Rs.35,000/- as awarded by the Tribunal. Thus, the total amount of compensation payable to the claimants would be Rs.4,27,600/- instead of Rs.2,25,500/-. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.

9. The appeal of the claimants thus stands allowed and disposed off.

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

Sumit