

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 863 of 2006

1. Smt. Bindrawati Patel, Age 41 years, W/o. Late Rohit Patel,
2. Satish Patel, Age 26 years, S/o. Late Rohit Patel,
3. Umesh Patel, Age 22 years, S/o. Late Rohit Patel,

All the above are R/o. Village Chhadan, Post Chhadan, P.S. and Tahsil Kasdol, District Raipur (Chhattisgarh)

---- Appellants

Versus

1. Badrinarayan Sharma, Age 26 years, S/o. Late Harishankar Singh, R/o. Village Narharpur, P.S. Marhoda, District Chhapra (Bihar), At present R/o. Voolwarth Company Quarter, Veersawarkar Nagar, Heerapur, P.S. Aamanaka, District Raipur (C.G.)
2. Sukhmohan Singh Bawa, Age 45 years, S/o. Brijmohan Singh, R/o. Shop No.04, C/o. Sona Transport Tahelsingh Complex, Tatibandh, Raipur District Raipur (C.G.)
3. The Oriental Insurance Com. Ltd. D.O. 02, Cowla Complex, Devendra Nagar Road, Sai Nagar, Raipur (C.G.)
4. Dulmoti W/o. Late Shobha Ram, R/o. Village Aamalidhih, P.S. Pithora, Tahsil and District Mahasamund (C.G.)

---- Respondents

For Appellants	:	Mr. Jameel Akhtar Lohani, Advocate
For Respondent No.3	:	Mr. Ghanshyam Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/08/2017

1. Present is an appeal under Section 173 of Motor Vehicle Act, 1973 assailing the award dated 28.04.2006 passed by the 1st Additional Motor Accident Claims Tribunal, Baloda Bazar. Vide the said impugned award the Tribunal in an application filed by the claimants under Section 166 had allowed the claim application and while awarding the award the Tribunal has held that the accident arose because of the contributory negligence on the part of the deceased Rohit Patel and also the driver of the offending truck and therefore the compensation was assessed at Rs.6,29,200/- and because of the contributory negligence, 50% was deducted and amount of

Rs.3,14,600/- was awarded in favour of the claimant. It is this award which is under challenge in the present appeal.

2. The counsel for the appellants at the outset submits that finding of the Tribunal of there being contributory negligence on the part of the deceased is without any basis or any strong evidence, It is only on the basis of assumption and presumption based on the statements and also based upon the evidence recorded in another claim case arising out of the same accident i.e. Claim Case No. 08/2004 dated 06.01.2005 passed by the Motor Accident Claims Tribunal, Mahasamund. He further submits that the compensation awarded is also on the lower side as the multiplier applied was not in accordance with the guidelines laid down by the Hon'ble Supreme Court in the case of "Sarla Verma and others vs. Delhi Transport Corporation and another" [2009 (6) SCC 121] and the income under the future prospects has not been calculated for quantifying the compensation. Thus prayed for the suitable modification in compensation and for setting aside the finding of contributory negligence.
3. Counsel appearing for the Insurance Company submits that the finding in Claim Case No. 08/2004 attains finality on account of appeal being preferred by the claimant and appeal having been dismissed by the High Court. He further submits that so far as contributory negligence is concerned, finding of the Tribunal is that accident occurred on the head on collision between the offending Truck and Motorcycle driven by the deceased Rohit Patel. That the accident also occurred at the middle of the road and thus finding of the Tribunal cannot be faulted with. He further submits that quantum part also does not warrant any interference as Tribunal has taken into consideration the age, wage and the multiplier that was being applied on the relevant point of time and thus prayed for rejection of the appeal.
4. Having heard the contentions put forth on either side and on perusal of record, it would be relevant to mention that as regards to the claim case No. 08/2004 is concerned, the appeal was filed against the said award by the claimants vide MA No. 316/2006. The said appeal has got dismissed for want of prosecution on 21.07.2009. That means

appeal has not been decided on merits. Thus, the appellants has the right to challenge the findings of the Tribunal before the High Court. It would not be hit by the principle of resjudicata.

5. Counsel for the appellants further submits that the stand of the Commissioner and the written statement of driver of the vehicle is that when tyre of the Truck got burst the vehicle lost balance and fell in the field. He has denied the accident. He further submits that if we read the evidence of the eyewitness A/3 Niranjan Nayak, he says that he saw the accident from distance of 15-20 meters and that he had chased the vehicle and driver and after the driver fled away and after some distance the truck turned turtle.
6. From the material available on record i.e. statement of the eyewitness AW/3, written statement of the driver and the statement put forth by the owner before the Insurance Company for own damage claim shows that, there was a burst of tyre of the offending vehicle i.e. Truck which perhaps led to the accident. From this we can infer that when the driver tried to flee from the place of occurrence, because of the tyre being burst, it turned turtle after traveling for some distance.
7. Further from the record it also shows that, the Insurance Company itself has not led any evidence substantive to prove contributory negligence on the part of the deceased.
8. Thus, this court is of the opinion that finding of contributory negligence by the Tribunal only on account of accident taking place in the middle of the road seems to be in proper and the said finding thus deserves to be set-aside and it is ordered accordingly.
9. So far as the appeal for enhancement of the award is concerned, true it is that the Tribunal has not taken into account the future prospect while quantifying the compensation. Considering the age of the deceased being 48 years and as per the guidelines laid down by the Supreme Court in case of **“Sarla Verma and others vs. Delhi Transport Corporation and another” [2009 (6) SCC 121]** it should be 30% of his income taken into account for quantifying the compensation. If 30% of Rs.6,500/- which was the monthly wage of deceased is added, the amount would come to Rs.8,450/- per month

and the yearly income would be Rs.1,01,400/- and if 1/3rd of the same is deducted towards personal expenses, the figure would come to Rs.67,600/- which would be the yearly income for the purpose of calculating the compensation. If Rs.67,600/- is multiplied by applying multiplier of 13 instead of 12 as applied by the Tribunal, figure would come to Rs.8,78,800/-. At this juncture it would be relevant that multiplier of 13 is as per the guidelines laid down by the Supreme Court in the case of Sarla Verma (Supra).

10. Thus the impugned award deserves to be and is accordingly modified. It is held that claimant shall be entitled for loss of compensation under the head of loss of dependency of Rs.8,78,800/- instead of Rs.6,29,200/-.
11. So far as the compensation under the other heads are concerned, this Court definitely feels that Rs.10,000/- which has been awarded by the Tribunal is also extremely on lower side and the said amount also deserves enhancement and is accordingly enhanced to Rs.1,25,000/-.
12. Thus the appellants would be entitled for total compensation of Rs.10,03,800/- instead of Rs.3,14,600/- that has been awarded by the Tribunal. The said enhanced amount shall also carry interest @ 6% per annum from the date of application till the date of its realization. Rest of the direction given by the Tribunal shall remain intact.
13. The appeal is thus allowed.

Sd/-
(P. Sam Koshy)
Judge

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