

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 201 of 2009**

The New India Assurance Co.Ltd. Divisional Office, Anand Bhawan, Head Floor, Main Road Adityapur, Jharkhand, 83/03 through the Divisional Manager, the New India Assurance Company Ltd. opp. Rajeev Plaza, Near Bus Stand, Bilaspur.

---- Appellant**Versus**

1. Badkharam S/o Dhan Sai, aged 50 years, occupation Agriculture.
2. Smt. Ghamni Bai W/o Shri Badkharam, aged 45 years, occupation House wife, Caste Kanwar.
Both R/o Village – Boda (Khamhar Para), P.S. - Batauli, District - Surguja (C.G.).
3. Ashok Sao S/o Shri Ravi Sundar Sao, At - 93/1, Mahgawan Post - Pandu, Vishrampur, District – Palamu, Jharkhand.
4. M.D. Jasim Ansari S/o Shri Imamat Ansari, R/o Village & Post - Meral, District - Gadwa, Jharkhand.
5. Branch Manager Oriental Insurance Company Ltd. Division Office, Near U.T.I. Bank, District – Bilaspur (C.G.)
6. Alok Agrawal S/o Shri Late Basant Lal Basant Bus Operator, R/o Basant Lal Gali, Ambikapur, District - Surguja (C.G.)
7. Harshiya Choubey S/o Shri Jit Narayan Choubey, R/o Mahola, Ward No. 3, Ambikapur, District - Surguja (C.G.).

---- Respondents**MAC No. 26 of 2011**

Branch Manager Oriental Insurance Company Ltd. Division Office, Near U.T.I. Bank, District – Bilaspur through its Divisional Manager, Division Office, Geetanjali Bhawan, Main Road Korba (CG).

---- Appellant**Versus**

1. Badkharam S/o Dhan Sai, aged 50 years, occupation Agriculture.
2. Smt. Dhamni Bai W/o Shri Badkharam, aged 45 years, occupation House wife, Caste Kanwar.
Both R/o Village – Boda (Khamhar Para), P.S. - Batauli, District - Surguja (C.G.).
3. The New India Insurance Co. Ltd. Division Office Anand Bhawan Head Floor, Main Road Adityapur, Jharkhand, PIN-831013.
4. Ashok Sao S/o Shri Ravi Sundar Sao, At - 93/1, Mahgawan Post - Pandu, Vishrampur, District – Palamu, Jharkhand.
5. M.D. Jasim Ansari S/o Shri Imamat Ansari, R/o Village & Post - Meral, District - Gadwa, Jharkhand.
6. Alok Agrawal S/o Shri Late Basant Lal, occupation, Basant Bus Operator, R/o Basant Lal Gali, Ambikapur, District - Surguja (C.G.)
7. Harshi Choubey S/o Shri Jeet Narayan Choubey, aged about 25 years, R/o Mahola, Ward No. 3, Ambikapur, District - Surguja (C.G.).

---- Respondents

For Appellants	:	Shri Sourabh Sharma and Shri Ghanshyam Patel, Advocates.
----------------	---	--

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

27.09.2017

1. By this common award both the appeals are being disposed of as common facts & issues are involved in these appeals and arise out of the same accident.
2. These are two appeals filed by the two insurance companies arising out of same award dated 14.10.2008 passed by the 1st Additional Motor Accident Claims Tribunal, Ambikapur, in Claim Case No.38/2007. Vide the said impugned award, the Tribunal in a proceeding under Section 166 of the MV Act has awarded a compensation of Rs.16,83,112/-. While passing the award, the Tribunal has fastened the liability of payment of compensation of equal share to both the appellant-insurance companies of the two vehicles involved in the accident, attributing contributory negligence of the ratio of 50:50.
3. Both the insurance companies who have been fastened with the liability of payment of compensation have challenged the award on two grounds firstly the finding of contributory negligence being erroneous deserves to be set aside and secondly the multiplier applied is erroneous to the extent that the age of claimant should had been borne in mind while quantifying the compensation.
4. Going through the records, this court does not find any evidence

substantive enough to have been led by the insurance company or have been extracted from the cross examination of the witness examined to prove the evidence of contributory negligence to be an erroneous finding. Thus, the contention of both the insurance company stands negated. The Tribunal has given justified reasons while attributing the contributory negligence and the same does not deserve any interference.

5. So far as applying the multiplier while quantifying the compensation is concerned, this court is of the opinion that the said issue also is no longer res integra in view of judgment of Supreme Court in case of Amrit Bhanu Shali & Ors. Vs. National Insurance Co. Ltd. & Ors.2011(12)SCC 748, wherein on the issue of determination of compensation and applicability of the multiplier, the Supreme Court has held that compensation shall be determined on the basis of age of the deceased and not on the basis of age of the dependents.
6. In view of the aforesaid decision of the Supreme Court, the ground raised by the appellant in these two appeals with regard to applying the multiplier is also answered in the negative.
7. Accordingly, both the appeals i.e. MAC Nos. 201 of 2009 and MAC No.26 of 2011 being devoid of merit are liable to be and are hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge