

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No.561 of 2008**

1. Smt.Guddi Devi Wd/o Late Rajkumar Ram, aged about 22 years.
2. Karanram S/o Late Rajkumar Ram, aged about 10 months, Minor through guardian mother Guddi devi.

Both are R/o Village Harpur, Police Station Goriyakothi, District Shiwan (Bihar), Present Address – Patrapali, Tahsil and District Raigarh (C.G.).

---Appellants

Versus

1. Jitendra Singh Rajput S/o Balmiki Singh, aged about 37 years, Occupation Driver, Permanent R/o Village Badkikhadav, Police Station Sahar, District Bhojpur (Uttar Pradesh), present address R.S.T.Company Punjipathra, Police Station – Tamnar, Tahsil – Gharghoda, District Raigarh (C.G.).
2. Raigarh Sainik Transport Company Punjipathra, Police Station Tamnar, Tahsil Gharghoda, District Raigarh, Through Major Harvindar Singh S/o Colonel Sohan Singh, Occupation Vehilcle Owner, Through – Special Power of Attorney Holder Major Nirmal kumar Dhawa S/o Late Maniklal, Occupation – Manager in Raigarh Sainik Transport Company, Punjipathra, Police Station Tamnar, Tahsil Gharghoda, District Raigarh (C.G.).
3. The New India Insurance Co.Ltd., Through Branch Manager, Branch Office Sattigudi Chowk, Raigarh (C.G.).

---Respondents

For appellants	:	Shri Amit Sharma, Advocate.
For resp.No.3/Insurance Company	:	Shri B.N.Nande, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

09/11/2017

1. Present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 15/02/2008 passed by the learned Motor Accident Claims Tribunal, Raigarh (C.G.) in Motor Accident Claim Case No.155/2006.
2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded the compensation of Rs.2,25,000/- along with interest @ 6% per annum from the date of application.
3. While passing the said impugned award, the Tribunal has assessed the contributory negligence to the accident of 25% on the deceased and 75% on the Insurance Company who had insured the offending vehicle.

4. The appeal has been filed by the claimants challenging the impugned award on the ground, that the finding of contributory negligence is erroneous as it is without any basis and therefore the same deserves to be set aside. The counsel for the appellants submits, that the amount of income assessed by the Tribunal is also on the lower side and the future prospects have not been taken into account so also the multiplier applied is also incorrect and thus prayed for suitable enhancement of the award.

5. The counsel for the Insurance Company however opposing the appeal submits, that the Insurance Company had immediately after the award deposited the entire amount awarded and since the Insurance Company have been recently brought on record by virtue of amendment, the Insurance Company may not be further saddled with the responsibility of payment of interest on any enhanced amount to be made. He further submits, that the Insurance Company cannot be blamed for the error which is kept in the order as well as in the proceedings before this court on an earlier occasion and prayed for the rejection of the appeal.

6. Perusal of record would show, that there is no evidence on record with which it could be conclusively held, that the vehicle on which the deceased was traveling was infact being driven by the deceased himself. In the absence of there been any conclusive proof, it could be a case of deceased being the pillion rider and thus the finding of contributory negligence by the Tribunal would be erroneous and without any strong basis and for the said reason, same is set aside/quashed.

7. So far as enhancement is concerned, considering the period of accident being May-2006, undisputedly, during the said period even an unskilled labour would have earning more than Rs.100/- per day which would make it Rs.3,000/- per month. Therefore this court assesses the income of the deceased at Rs.3,000/- per month and Rs.36,000/- yearly. The claimants shall also be entitled for future prospects while quantifying the compensation. Considering the age of the deceased and the nature of employment, the claimants would be

entitled for 40% towards future prospects. 40% of Rs.36,000/- would be Rs.14,400/- totaling Rs.50,400/- of which if 1/3rd is deducted towards personal expenses, the amount would come to Rs.33,600/- which if multiplied by applying multiplier of 17, the amount would become Rs.5,71,200/-. Since, this court has already set aside the finding of contributory negligence, the claimants shall be entitled for the total compensation of Rs.5,71,200/- towards loss of dependency. In addition, the claimants shall also be entitled for a lump sum amount of Rs.70,000/- towards conventional head. Thus, the total amount compensation payable to the claimants would become Rs.6,41,200/- instead of Rs.2,25,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

8. The appeal stands allowed and disposed off.

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

Sumit