NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1272 of 2008

1. Smt. Bharati Dewangan, Wd/o. Late Beerbal, Aged about 22 years,
2. Ku. Hemlata, D/o. Late Beebal Dewangan, Aged about 6 years,
3. Praveen Dewangan, S/o. Late Beebal Dewangan, Aged about 4 years,
4. Ku. Poonam Dewangan, D/o. Late Beebal Dewangan, Aged about 2 years,

   Appellants No. 2, 3 & 4 through Natural Guardian Mother Bharati Dewangan.
5. Smt. Jain Bai, Wd/o. Ghanshyam Dewangan, Aged about 52 years,

   All are R/o. Aarmarikala, Police Station Gurur, Tahsil Gurur, District Durg, Chhattisgarh

---- Appellants

Versus

1. Taj Mohammed, S/o. Iskhak Mohammed, R/o. Taj Provision Stores, Dantewada, District Dantewada, Chhattisgarh
2. United India Insurance Company Limited, Krishna Complex, Kachhari Chowk, Raipur, Chhattisgarh

----Respondents

For Appellants	:	Mr. D. Kushwaha, Advocate on behalf of Mr. Pushpendra Patel, Advocate
For Respondent No.2	:	Mr. H.B. Agrawal, Sr. Advocate along with Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/11/2017

1. Present is a Claimants' appeal under Section 173 of the Motor Vehicles Act assailing the award dated 24.04.2008, passed by the Additional Motor Accident Claims Tribunal (FTC) Balod, Chhattisgarh, in Claim Case No. 62/2007.

2. Vide the said impugned award, the Tribunal, in a claim case under Section 166 of the Motor Vehicles Act, has awarded a compensation

of Rs.2,91,000/- with interest @ 6% per annum from the date of application.

3. The contention of the counsel for the appellants assailing the impugned award and seeking for enhancement is that the multiplier applied by the Tribunal, so also the income under the future prospects have not been considered while computing the compensation and prayed for suitable modification of the order.

4. It was also contended by the counsel for the appellants that there was no material brought before the Tribunal to establish the contributory negligence. It was lastly contended by the counsel for the appellants that the compensation under the conventional head is also unreasonably low which has been provided by the Tribunal.

5. The counsel for the Insurance Company however opposing the application on the ground that the award seems to be fair and reasonable and does not warrant any interference and that the findings of the Tribunal is based on the material evidence which have come on record and thus prayed for the rejection of the appeal.

6. Having heard the contentions put forth on either side and on perusal of the record, we proceed to decide the issue of contributory negligence first. In the factual matrix of the case, the Insurance Company has not led any evidence to establish the contributory negligence. Further from the report Exhibit P/8 the spot Map, the finding of the Tribunal itself is that from the spot map, it is not discernable as to who was moving on the wrong side which has

resulted in the accident.

7. In the given facts of the case, the finding of contributory negligence, assessed by the Tribunal cannot be said to be proper, legal and justified. The view of this Court further stands fortified by the order of the Division Bench of this Court in MAC No. 1142/2008, the claim case, which arose from the said accident i.e. the pillion rider, who was traveling with the deceased in the present case, decided on 25.07.2012.

8. As regards the scope of enhancement of the compensation is concerned, this Court does not find any reason to interfere with the income assessed by the Tribunal of the deceased, which is Rs.6,000/-. However, as regards the multiplier under the future prospects is concerned, the Claimants in the instant case would be entitled for benefits in accordance with the principles laid down by the Hon'ble Supreme Court in the case of ***"Sarla Verma & Ors vs Delhi Transport Corp. & Anr." (2009) 6 SCC 121).*** Accepting Rs.6,000/- as the monthly income of the deceased, the yearly income of the deceased would become Rs.72,000/- of which if 1/3 is deducted towards personal expenses, it would come to Rs.48,000/- which if multiplied by applying the multiplier of 17, the amount would come to Rs.8,16,000/-. It is thus held that the Claimants shall be entitled for the amount of Rs.8,16,000/- towards loss of dependency. In addition, considering the decision of ***"Rajesh and others vs. Rajbir Singh and others" (2013) 9 SCC 54*** the compensation under the conventional head payable would be Rs.1,00,000/-. Thus,

the total compensation payable would become at Rs.9,16,000/- instead of Rs.2,91,000/- as awarded by the Tribunal.

9. Since the finding of contributory negligence has been set-aside by this Court, the Claimants shall be entitled for the entire compensation of Rs.9,16,000/-.

10. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal i.e. 6%.

11. The appeal thus allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved