

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No.1370 of 2009

Smt.Jumani Begam W/o Late Mirja Jumman Begam Musalman, aged about 45 years, Occupation House Wife, R/o City Station Chowk, Pandari, Raipur, Tahsil and District Raipur (C.G).

---Appellant

Versus

1. Ram Narayan S/o Mouji Lal, Occupation Driver, R/o Mukesh Carrier, G.E.Road, Mohaba Bazar, Raipur, Tahsil and District Raipur (C.G.).
2. Mukesh Carrier, Through : Managing Director, G.E.Road, Mohaba Bazar, Raipur, District Raipur (C.G.)
3. I.C.I.C.I. Lobard General Insurance Company Limited, Through : The Branch Manager, Branch Office, Lalganga Shopping Mal, G.E.Road, Raipur (C.G.).

---Respondents

For Appellant	:	Shri Wasim Miyan, Advocate (Appointed by the Court).
For respondent Nos. 1 & 2	:	Shri Sunil Verma on behalf of Shri Sumesh Bajaj, Advocate
For respondent No.3/ Insurance Company	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/10/2017

1. The original counsel who had filed this appeal had pleaded no instructions. This court taking into consideration the fact that, the appeal is of the year 2009 thought it fit for getting the matter decided by taking the assistance from Shri Wasim Miyan, Advocate present in the court.
2. Present is an appeal preferred by the claimants under Section 173 of the Motor Vehicle Act, 1994 challenging the award dated 30/07/2009 passed by the 1st Additional Motor Accident Claims Tribunal, Raipur in

Claim Case No.64/2008. Vide the said impugned award, the Tribunal in a Claim Case under Section 166 of the Motor Vehicle Act has awarded compensation of Rs.3,81,988. The said amount was 50% of the actual assessment of Rs.7,63,976/- as assessed by the Tribunal attributing the contributory negligence towards the deceased for the accident to have arisen.

3. The counsel for the appellant submits that, there was no strong material available before the Tribunal for reaching to the conclusion of their being contributory negligence. Likewise, it was also contended that, the compensation paid under the conventional head was also unreasonably low and deserves suitable modification. He further submits that, the salary of the deceased was also not been properly assessed while quantifying the compensation. He further submits that, the deductions carried out by the Tribunal from the salary which has been assessed was not proper in as much as the deductions as is reflected in paragraph 18 of the impugned award shows that, the amount deducted by the Tribunal was towards the Employees Provident Fund which otherwise also was the income of the deceased which he would have got on his superannuation. Further, the deduction of Rs.150/- monthly is towards the Group Insurance Scheme which also is a part of the income of the deceased which he would have received at the time of his superannuation. Thus, the entire amount of salary of Rs.12,636/- ought to have been taken for calculating the compensation. It was also contended by Shri Wasim Miyan that, the deduction made towards the personal expenses of 50% is also on the higher side as it ought to had been 1/3rd of his monthly income. Thus, prayed for the amount of compensation to be suitably enhanced.

4. The counsel for the Insurance Company however opposing the appeal submits that, the finding of the Tribunal so far as contributory negligence is concerned and the quantification of the compensation is based upon the evidences which have come on record and therefore, the amount of compensation thus being fair and reasonable does not warrant any interference and prayed for the rejection of the appeal.

5. Having considered the rival contentions put forth on either side and on perusal of record undisputedly, the deceased was an employee of the State Government working in the Water Resources Department as Assistant Grade – II at the time of the accident. The salary slip shows his salary at Rs.12,636/-. The deductions made was only towards the E.P.F. and G.I.S. both of which are also the income of the deceased which he would have received at the time of superannuation.

6. Thus, for quantifying the compensation, this court is of the opinion that, the entire amount of Rs.12,636/- should be taken into account for quantifying the compensation. It is ordered accordingly.

7. Thus, accepting Rs.12,636/- as monthly income of the deceased, the yearly income would be Rs.1,51,632/- of which if 1/3rd is deducted towards personal expenses, the amount would reach to Rs.1,01,088/- which if multiplied by applying multiplier of 11, the amount would become Rs.11,11,968/- which for calculation purpose is rounded at Rs.11,12,000/-.

8. At this juncture if we taken into consideration the challenge made to the finding of the Tribunal to the contributory negligence, it would be relevant at this juncture to refer to the decision of the Hon'ble Supreme Court reported in the case of **Raj Rani & Ors. Vs. Oriental Insurance Co. Ltd. & Ors. [2009 {13} SCC 654]** whereby the Supreme Court has

authoritatively holds that, when a person driving the vehicle hits the stationery vehicle from the rear side, the element of the contributory negligence automatically stands established and the ratio of negligence under the said circumstances would be 50:50.

9. In the light of the aforesaid decision of the Supreme Court in the case of *Raj Rani (Supra)* this court is of the opinion that, the finding of the Tribunal in assessing the contributory negligence at 50% on the part of the deceased does not warrant any interference and the said ground raised by the counsel for the appellant stands negated.

10. In view of the contributory negligence assessed by the Tribunal, the claimant shall be entitled for compensation of Rs.5,56,000/- towards loss of dependency.

11. So far as compensation under the conventional head is concerned, taking into consideration the decision of the Supreme Court in the case of ***Rajesh & Ors. Vs. Rajbir Singh & Ors. [2013 {9} SCC 54]***, this court is of the opinion that, the amount of compensation awarded by the Tribunal towards conventional head is unreasonably low and same deserves to be suitably enhanced. Thus, a lump sum amount of Rs.1,25,000/- under conventional head is granted instead of Rs.12,500/- as assessed by the Tribunal. Thus, the claimant shall be entitled for total compensation of Rs.6,81,000/- instead of Rs.3,81,988/- as assessed by the Tribunal. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.

12. This court will like to render a word of appreciation to Mr.Wasim Miyan, Advocate for providing legal assistance in the disposal of the appeal. The Secretary, High Court Legal Services Authority, Bilaspur is directed to send a copy of this judgment to the Secretary, District Legal

Services Authority, Raipur, who, in turn, shall make all endeavors in serving the copy to the family members of the appellant at the earliest. Registry is directed to take necessary steps promptly.

Sumit

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