

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 16 of 2016

1. Smt. Kusum Bai, W/o Late Shri Gita Chandrawanshi, Aged About 28 Years
 2. Ku. Saumya Chandrawanshi, D/o Late Shri Gita Chandrawanshi, Aged About 11 Years
 3. Ku. Sakshi Chandrawanshi D/o Late Shri Gita Chandrawanshi, Aged About 8 Years
 4. Sameer Chandrawanshi S/o Late Shri Gita Chandrawanshi, Aged About 5 Years
 5. Smt. Kumaitin Bai W/o Shri Fatteram Chandrawanshi, Aged About 55 Years
 6. Fatteram Chandrawanshi S/o Late Shri Bisauhara Chandrawanshi, Aged About 58 Years
- (Appellant No.2 to 4 are minor, through natural guardian, Appellant No.1, Smt. Kusum Bai)
- All R/o Village Dharampura, P. S. Pipariya, Tehsil Kawardha, Civil & Revenue District Kabirdham (Chhattisgarh)

---- Appellants

Versus

1. Ramdas Manikpuri S/o Tulsidas Manikpuri, Aged About 39 Years R/o Village Joratal P. S. And Tehsil Kawardha, Civil & Revenue District Kawardha (Chhattisgarh)
(Owner of the Offending Vehicle Truck Bearing Registration No. C G 09 B 0213)
2. Sunil Kumar Markam S/o Shri Dhruv Singh Markam, Aged About 27 Years R/o Village Pauni Vihar, Malajkhand, P. S. Malajkhand, Civil & Revenue District Balaghat (M.P.)at Present Karpatri Chouk, Kawardha, P. S. Kawardha, Civil And Revenue District Kabirdham (Chhattisgarh)
(Driver of the offending Vehicle Truck Bearing Reg. No. C G 09 B 0213)
3. Shri Ram General Insurance Company Limited, Through Branch Manager, E-8, Riico, Industrial Area, Sitapura, Jaipur (Rajasthan) 302022 (Insurer of the Offending Vehicle Truck Bearing Reg. No. CG 09 B 0213)

---- Respondents

For appellants - Shri Keshav Dewangan, Advocate.
For respondent No.3 - Shri S.S. Rajput, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order****01/08/2017**

1. This instant appeal is against the award dated 4th November, 2015 passed in Claim Case No.153/2014 by the Motor Accident Claims Tribunal, Kabirdham (Kawardha) whereby as against the claim award of Rs.52,90,000/- an award of Rs.4,48,688/- has been made.
2. As per the case of the claimants, on 18/04/2014 deceased Gita Chandrawanshi was going from Dharampura to Kawardha on his motorcycle after completing the work of his Jagger Factory. At the relevant time, non-applicant No.2 Sunil Kumar Markam who was driving the truck bearing No. CG 09 B.0213 all of a sudden stopped his truck in the middle of the road by putting the brake and at the relevant time no indication was given by back lights. Consequently, deceased dashed into back of the truck and sustained injury. It was stated that at the time of the incident deceased was aged about 33 years and had installed Jaggery factory there in Dharampura and in season used to earn Rs.4 to 4.5 lakhs as income. It was stated that the claim was preferred by the wife, three minor children, mother and father of the deceased and it was stated that they were completely dependant on the deceased.
3. Non-applicants No.1 and 2 has disowned the averment of the claim petition and stated that at the relevant time truck was being stationery at the side of the road whereas deceased was driving motorcycle in a very rash and negligent manner and could not control and as such dashed into the truck, thereby he himself was liable. Learned court below after evaluating the evidence has held that at the relevant time the deceased was also contributory negligent to the extent of 50% and passed the award accordingly. It was further held that income of the deceased was Rs.6229/- per month being that of the skilled labour which was prevailing

in the State and as such award was calculated on that basis.

4. Learned counsel for the appellants would submit that without any evidence on record the tribunal has come to the conclusion that deceased was drunk at the relevant time and was liable for contributory negligence. It is further submitted that future prospect has not been properly given, therefore it may be suitably enhanced.

5. Per contra, learned counsel for the insurance company vehemently opposes the argument and would submit that the order is well merited. Post mortem report would show that deceased was drunk, consequently inference can be drawn about contributory negligence.

6. Heard learned counsel for the respective parties.

7. Perused the documents and the statement of the witnesses alongwith documents of the court below. With respect to the contributory negligence, the claimants have examined one Narad Chandrawanshi. He was the eye witness. It is been stated that on the date of incident on 18/04/2014 he was also going from Dharampura to Kawardha and in his front deceased was going in his motorcycle and before him truck was also on the road. It is stated that all of a sudden non-applicant-2 applied the brakes and stopped the truck in middle of the road. It is stated before applying such brakes there was no indication by any light or indicator light as such Gita Chandrawanshi who was going ahead of him dashed in to the truck. Witness further stated that had he been there in place of Gita Chandrawanshi he would have also been dashed into the truck as brake lights did not show the application of brakes since it was not functioning. In the cross examination suggestion was denied that deceased was driving the vehicle in a rash and negligent manner and the at the time of accident and the deceased was drunk.

8. The FIR of the accident is proved by claimant/wife. The criminal

case, the FIR, charge sheet is marked as Ex.A-1, A-2 and A-3 and the vehicle inspection report is also marked Ex.A-6. Contents of FIR would show that the deceased was found dead in middle of the road and truck was standing in middle of the road. Physical and mechanical verification report of the truck Ex.A-6 shows that indicator and brake light was not working, therefore taking statement of the eye witness Narad Chandrawanshi AW-2 alongwith FIR Ex. A-2 and the truck mechanical report reading them together it shows that at the relevant time indicator light of the truck and brake light of the truck was not working. The FIR shows that truck was in the middle of the road, therefore statement of AW-2 is corroborated by documentary evidence. Nothing has come out in the cross examination of the AW-2 to hold that at the relevant time deceased was driving vehicle in a rash and negligent manner and it dashed against the truck in back side of the truck. For the reasons only post mortem report Ex.A-5 shows that alcohol smell was coming from mouth and stomach, inference can be led that at the relevant time deceased was in drunken uncontrolled condition because of the intoxication and he himself has dashed into the truck. No evidence has been adduced by the non-applicant to infer that at the relevant time vehicle was being driven by deceased under the influence of alcohol and was uncontrolled. Only the evidence of the non-applicant Sunil Kumar Markam driver it is been tried to project that truck at the relevant time was standing at the side of the road and the indicator light was also working. Said working condition of indicator and the light has been negated by Ex.A-6, therefore, no evidence exist in the case to hold that deceased was contributory negligent in causing accident. Consequently, the finding of the learned claims tribunal that deceased was 50% liable for contributory negligence is set aside.

9. Now coming to the quantum of compensation. The tribunal has assessed Rs.6229 per month being that of skilled labour. Document which has been exhibited by the claimants would show that deceased has obtained loan from State Bank cash credit limit of Rs.4,50,000/- and term loan of Rs.12,50,000/- and was running a factory of jagger with capacity of 500 metric tonne. The document also shows that electricity bill were being paid for factory. Considering the same nature of documents filed it appears that the deceased was running a factory and was self employed and had obtained huge loan from the bank which otherwise demonstrate the financial capacity of deceased. Therefore, taking into facts of this case in the considered opinion of this court minimum Rs.10,000/- per month can be fairly assessed that of the deceased. Further deceased was stated to be aged about less than 40 years. No future prospect has been awarded. Considering the same, following the principle laid in case of **Rajesh & others Vs. Rajbir Singh & others** reported in **(2013) 9 SCC 54** further 50% is to be added to the income, thus total income of the deceased would come to $\text{Rs.10,000} + 5000 = \text{Rs.15,000/-}$ per month. Claim petition was filed by the six persons ie. wife, three children, mother and father, as such there will be deduction of $\frac{1}{4}^{\text{th}}$ towards personal expenses which comes to Rs.3750/-. Thereby, loss of monthly dependency comes to $\text{Rs.15000} - 3750 = \text{Rs.11250/-}$. Deceased was aged about 33 years at the time of accident as per post mortem report and statement of the claimants, therefore multiplier of 16 would be applicable as per law laid down in case of **Sarla Verma Vs. DTC (2009) 6 SCC 121**. Thus, total loss of dependency comes to $\text{Rs.11250} \times 12 \times 16 = \text{Rs.21,60,000/-}$. Tribunal has awarded Rs.50,000/- as lump sum for loss of love and affection, loss of estate etc. which in the opinion of this court this appears to be too meager. Therefore, it needs to be suitably enhanced and I deem it proper to grant

Rs. 1 lakh for loss of consortium to the wife, Rs.1,50,000/- for loss of love and affection to three minor children (Rs.50,000/- for each minor child), Rs.50,000/- for loss of love and affection towards mother and father, Rs.50,000/- for loss of estate and Rs.25,000/- for funeral expenses. Consequently, the total compensation to be re-assessed as follows:-

S.No.	Heads	Calculation
(i)	Income @ Rs.10,000/- per month plus 50% of the income to be added as future prospect which comes to Rs.5000/- whereby the amount comes to Rs.15,000/-	Rs.15,000/-
(ii)	1/4th of the above to be deducted as personal expenses since claim has been filed by 6 persons thereby loss of monthly dependency comes to	Rs.15000 – 3750 = Rs.11250/-
(iii)	Annual dependency comes to	Rs.11250 x 12 = Rs.1,35,000/-
(iv)	By applying multiplier of 16 looking to the age of deceased, it comes to	Rs.1,35,000x16= Rs.21,60,000/-
(v)	For loss of consortium to the wife	Rs.1,00,000/-
(vi)	For loss of love and affection to 3 minor children @ Rs.50,000/- each	Rs.1,50,000/-
(vii)	For loss of love and affection towards mother and father	Rs.50,000/-
(viii)	For loss of estate	Rs.50,000/-
(ix)	For funeral expenses	Rs.25,000/-
	Total	Rs.25,35,000/-

10. Thus, total compensation will be Rs.25,35,000/-. After deducting Rs.4,48,688/- awarded by the tribunal, the enhancement would be Rs. 20,86,312/-. Since deceased was not contributory negligent, therefore entire amount of award shall be paid to the claimants. The said amount shall carry interest @ 6% per annum as awarded by the tribunal from the

date of filing of the claim petition till date of realization.

11. In the result, appeal is partly allowed. The claimants will be entitled to receive Rs.20,86,312/- in addition to what is already awarded to them by the claims tribunal.

12. So far as it relates to apportionment, each of the minor children i.e. appellants No. 2, 3 and 4 shall get Rs.1,50,000/- each and mother and father shall receive amount of Rs.75,000/- each and rest of the amount shall be payable to the wife. Registry is further directed to communicate the quantum of enhancement to the claimants in Hindi Deonagari language which may be communicated through gram panchayat of the concerned village wherein appellants are presently residing. The Legal Aid Committee of the area shall also ensure the payment of compensation to the appellants.

Sd/-

(Goutam Bhaduri)

JUDGE