NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 743 of 2010

1. Mohd. Hasan Khan S/o late Mohd. Kasim Khan, aged 50 years,

2. Smt. Noorjahan Khatun W/o Mohd. Hasan Khan, aged about 42 years
   Both R/o Village Telaikachhar (Kenapara), P.S. Jainagar, Tahsil Surajpur, Distt.-Surguja, C.G.

---- Appellants

Versus

1. New India Insurance Co. Ltd. through the branch Manager, branch Budhar Road, Shahdol (MM) (Insurer)
2. Rajendra Prasad Gupta S/o Gokul Prasad Gupta, R/o Jaisingh Nagar, Distt.-Shahdol, M.P. (Owner)
3. Tirath Singh S/o Shyam Lal, R/o Jaisingh Nagar, District Shahdol, MP (Driver)
4. United India Insurance Company Limited through: the Branch Manager, Gurunanak Chowk, Budhar Road, Shahdol, M.P.
5. Dharamvir Kumar S/o Ram Naresh Singh, Caste Rajput R/o Ward No.1 Pratappur Road, Ambikapur, Distt.-Surguja, C.G.

---- Respondents

For Appellants	:	Shri Virendra Verma under instruction of Shri Ashok Ku. Shukla, Advocate
For Respondent no.1	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

09/11/2017

Present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 01.04.2010 passed by the 2nd Additional Motor Accident Claims Tribunal (FTC), Surajpur, District Sarguja (CG) in Motor Accident Claim Case No. 3 of 2009. Vide the impugned award, the Tribunal, in a death case under Section 166 of MV Act, has awarded a compensation of Rs.2,95,000/- with interest @ 7.5% per annum from the date of application.

2. The present appeal has been filed by the claimants for enhancement of compensation. At the same time, respondent no.1 the New India Insurance

Company Limited i.e. the insurer of the truck involved in the accident bearing registration No. MP 18 HO 0521 has also filed a cross objection assailing the liability fastened upon it.

3. So far as the cross objection of respondent no.1 Insurance Company is concerned, the solitary ground raised by the counsel for the Insurance Company is that the Tribunal has not properly appreciated the aspect of contributory negligence. Counsel for respondent no.1 submits that it is a case where the deceased who was driving the pickup van bearing registration No. CG 15A 0671 had dashed the stationary truck from the back and therefore it cannot be said that the deceased was not responsible for the accident. He submits that if the deceased had been more careful and cautious and had maintained safe distance, the accident could have been avoided. Thus, prayed that the contributory negligence may be fastened upon the deceased also and the compensation be suitably apportioned between the Insurance Companies of the two vehicles.

4. So far as the appeal of the appellant-claimants seeking enhancement is concerned, the contention of the counsel for the appellants is that the multiplier applied is not based upon the age of the deceased. Counsel for the appellants submits that the income under future prospects has not been considered while computing compensation and the compensation awarded under the conventional head is also on the lower side.

5. As regards the cross objection by respondent no.1 Insurance Company, this Court on perusal of the records finds that the Insurance Company has not led any evidence in support of its contention. This Court also finds that the accident in the instant case was at around 11 p.m. i.e. around mid night on 17.09.2008. The record reflects that the truck which was insured by respondent no.1 had not displayed any parking light or indication to show that it was in a stationary mode and that there is also no evidence on record to reach to the conclusion that the said truck was parked by the side of the road and that it was not in the middle of the road. In the absence of any such evidence on record this Court is inclined to hold that the finding given by the Tribunal regarding contributory negligence is just and reasonable and the cross objection of respondent no.1 Insurance Company thus deserves to be and is accordingly dismissed.

6. So far as the appeal of the claimants for enhancement is concerned, this Court does not find the income which has been assessed by the Tribunal to be on the lower side. This Court finds that the Tribunal has rightly assessed the income of the deceased at Rs.4,500/- a month. In the light of the recent decision of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** decided on 31st October, 2017, the amount of future prospects which could be applicable in the given facts of the case would be 40% which would make the monthly income of the deceased to be Rs.6,300/- and yearly income Rs.75,600/-. The deceased being a bachelor, 50% is to be deducted towards personal expenses which would bring the amount to Rs.37,800/- which if multiplied applying the multiplier of 17 shall bring the figure to Rs.6,42,600/-. In addition, the claimants shall also be entitled for a lump sum compensation of Rs.70,000/- under the conventional head making the claimants entitled for a total compensation of Rs.7,12,600/- in stead of Rs.2,95,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

7. The present appeal thus stands allowed.

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

Bhola