

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 24 OF 2012

1. Smt. Sharda Tiwari, aged about 26 years, Wd/o Late Ashwani Kumar Tiwari
2. Master Vishu Tiwari, aged about 4 years, S/o Late Ashwani Kumar Tiwari
3. Kumar Dhaneshwari @ Dhani Tiwari, aged about 20 days, D/o Late Ashwani Kumar Tiwari
4. Hari Prasad Tiwari, aged about 55 years, S/o Late Bhanjan Prasad Tiwari

No.2 and 3 are minors, through their natural guardian Mother Smt. Sharda Tiwari.

All R/o Kududand, Bilaspur, Tahsil and District Bilaspur (C.G.)

... Appellants

versus

1. Khem Kumar Chaturvedi, aged about 31 years, S/o Kamta Prasad Chaturvedi, R/o Village Mohan Bhatha, Tahsil Takhatpur, District Bilaspur (C.G.)
2. Jagannath Prasad Dewangan, aged about 55 years, S/o Late Ghasiram Dewangan, R/o Dayalband, Bilaspur, at present R/o Village Manikpur, P.S. Torwa, Tahsil and District Bilaspur (C.G.)
3. United India Insurance Company Limited, Manager, Rajendra Nagar Chowk, Bilaspur, Tahsil & District Bilaspur (C.G.)

... Respondents

For Appellants	:	Mr. Rama Kant Pandey and Mr. Vikash Shrivastava, Advocates.
For Respondent No.3	:	Mrs. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/11/2017

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the Second Additional Motor Accident Claims Tribunal, Bilaspur, vide award dated 11.8.2011 passed in Claim Case No.138/2011.
2. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.3,36,300/- to the claimants with interest thereon at the rate of 7% per annum from the date of presentation of the claim application.

3. Learned counsel for the appellant-claimants submits that the impugned award is erroneous to the extent that the contributory negligence of 25% which has been attributed on the part of the deceased is without any basis. According to the learned counsel for the claimants, the owner and driver of the offending vehicle were proceeded *ex parte* and the insurance company has also not led any evidence, yet the learned Tribunal has reached to the finding of contributory negligence of 25% on the part of the deceased. He further submits that it is a case where the finding of contributory negligence arrived at by the learned Tribunal is only on the basis of there being a head on collision between the two vehicles. It was further contended that the claimants shall also be entitled for 50% income towards the future prospects as the deceased was an employee of the Municipal Corporation, Bilaspur. Likewise, it was also contended that the deduction of 1/3rd made by the learned Tribunal is erroneous, for the reason that the learned Tribunal has not considered the claim of appellant no.3-Ku. Dhaneshwari @ Dhani Tiwari as a dependant to the deceased, on account of the fact that she was born subsequent to the death of the deceased. This finding also is without any basis and therefore 1/4th deduction is to be made towards personal expenses.

4. Learned counsel for respondent no.3-insurance company however opposing the appeal submits that the award seems to be just and reasonable and that it has been based upon the evidence which have come on record and the award does not seem to be erroneous and thus prayed for the rejection of the appeal.

5. Heard the rival contentions put forth on either side and perused the record of the case.

6. So far as the contributory negligence is concerned, true it is that the owner and driver in the instant case were proceeded *ex parte* and the insurance company has not led any evidence to support their case. The finding of the contributory negligence is only on the basis of assumptions and presumptions as there is no material whatsoever with which the learned Tribunal could have attributed the negligence on the deceased. The said finding thus deserves to be and is accordingly set aside and the claimants shall be entitled for the entire amount of compensation assessed at.

7. So far as the quantum of compensation is concerned, since the salary of the deceased was Rs.3,150/- which has been proved by Exhibit P-7 which is a salary certificate by the employer, the claimants shall be entitled for 50% of the same towards the future prospects in view of the decisions of the Hon'ble Supreme Court starting from **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and Another**¹ up to **National Insurance Company Limited v. Pranay Sethi & Others**².

8. Accordingly, accepting the monthly income of the deceased at Rs.3150/- and adding 50% towards future prospects, i.e. Rs.1575, the amount would come to Rs.4,725/- that would make the yearly income at Rs.56,700/-. Accepting all four of the appellants to be the claimants including the girl child born subsequent to the death of the deceased as the birth appears to have been within a short span of time from the date of death, for all practical purposes, it has to be presumed that the child was born from the relationship of the deceased with appellant no.1, and thus the total dependants would be 4 and the deduction therefore would be 1/4th of the yearly income. Accordingly, after deducting 1/4th of Rs.56,700/-, the remaining amount would become Rs.42,525/- which if

1 2009 (6) SCC 121

2 SLP (Civil) No. 25590 of 2014, decided on 31.10.2017

multiplied applying the multiplier of 17, the net figure which would reach at Rs.7,22,925/- as the loss of dependency.

9. In addition, considering the total numbers of the claimants and the age of two minors child, this Court is of the opinion that applying the principles laid down by the Hon'ble Supreme Court in the case of **Rajesh and Others v. Rajbir Singh and Others**³, ends of justice would meet if the claimants are granted a lump sum compensation of Rs.1,00,000/- under the conventional heads.

10. It is accordingly ordered that the appellant-claimants shall be entitled for a total compensation of Rs.8,22,925/- instead of Rs.3,36,300/- which has been awarded by the learned Tribunal.

11. As a result, the appeal is allowed and the impugned award stands modified to the extent that the appellant-claimants shall be entitled for the entire compensation Rs.8,22,925, as the finding of contributory negligence stands already set aside by this Court. The enhanced amount shall also carry interest at the same rate as has been assessed by the learned Tribunal.

Sd/-
(P. Sam Koshy)
Judge

/sharad/