

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Misc. Appeal (C) No. 1151 of 2010**

1. Smt. Babita Devi Chaudhari W/o late Shri Narayan Chaudhari, aged about 24 years, R/o Qr. No. 129-A, New Quarter Subhash Chowk, Camp-1 Bhila, District Durg (CG)
2. Ku. Gayatri Chaudhari D/o late Narayan Chaudhari, aged about 6 years, Minor through mother Smt. Babita Devi Chaudhari, R/o Qr. No. 129-A, New Quarter Subhash Chowk, Camp-1 Bhila, District Durg (CG)
3. Abhijeet Chaudhari S/o late Narayan Chaudhari, aged about 3 years, Minor through mother Smt. Babita Devi Chaudhari, R/o Qr. No. 129-A, New Quarter Subhash Chowk, Camp-1 Bhila, District Durg (CG)
4. Smt. Daso Devi W/o late Sakhichand Chaudhari, aged about 55 years, R/o Qr. No. 129-A, New Quarter Subhash Chowk, Camp-1 Bhila, District Durg (CG)

**---- Appellants**

**Versus**

1. Bhupendra Kumar S/o Sadhu Ram Dewangan, aged about 26 years, R/o Maroda Taink, Krishna Chouk Maroda, PS Newai, District Durg, (CG)
3. Branch Manager, Bajaj Alliance General Insurance Company Ltd. Shiv Mohan Bhavan, Vidhan Sabha Road , Pandri Raipur (CG)

**---- Respondents**

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| For Appellants      | : | Shri Goutam Khetrapal along with Shri Vipin Tiwari, Advocates. |
| For Respondent no.2 | : | Shri S. S. Rajput, Advocate.                                   |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**13/11/2017**

Present is a claimants appeal under Section 173 of the Motor Vehicles Act assailing the award dated 23.09.2010 passed by the 11th Additional Motor Accident Claims Tribunal (FTC), Durg (CG) in Motor Accident Claim Case No. 24 of 2009. Vide the impugned award, the Tribunal in a claim case under Section 166 of the MV Act has awarded

compensation of Rs.3,75,000/- with interest @ 6% per annum from the date of application.

2. Counsel for the appellants assailing the award submits that the impugned award is bad in law to the extent of the finding of contributory negligence arrived at by the Tribunal. He submits that the quantification of 50% contributory negligence is without any sufficient basis and the award deserves to be modified in this regard. Counsel for the appellants submits that the income under future prospects has not been taken into consideration so also the deduction made would have been 1/4th instead of 1/3rd as has been assessed by the Tribunal. He further submits that the compensation paid under the conventional head is also on the lower side and prayed for suitable enhancement.

3. Counsel for the Insurance Company opposing the appeal submits that the finding of contributory negligence is based on the evidence which has come on record particularly the fact that the deceased in the instant case had dashed the mini truck from back. Therefore the contributory negligence is writ large and the assessment of 50% is therefore justified and the same does not warrant any interference. As regards the compensation awarded, counsel for the Insurance Company submits that the same is based upon the settled position of law as it stood on the date of award. Therefore, the award being just and reasonable, does not warrant any interference or enhancement.

4. Having heard the contentions put forth on either side and on perusal of the record what clearly reflects is that admittedly the accident in the instant case arose when the deceased who was travelling in a motorcycle dashed against the mini truck from rear side. The fact that the vehicle was hit from back itself shows that if the deceased had been more cautious, the accident could have been avoided or at least the intensity could have been reduced. At the same time it cannot be said that there was no fault on the driver of the mini

truck who appears to have been driving the mini truck in a rash and negligent manner which led to the accident.

5. In the given facts and circumstances of the case, this Court is of the opinion that the finding of 50% contributory negligence on the part of the deceased seems to be too harsh and the same deserves to be modified. Accordingly, it is ordered that the contribution on the part of the deceased for the accident is reduced to 25% and the percentage attributed upon the driver of the mini truck is 75%.

6. So far as the quantum of compensation is concerned, this Court is of the opinion that the Tribunal has rightly assessed the income of the deceased at Rs.60,000/- yearly. The employment and the salary drawn by the deceased has been proved and established before the Tribunal. However, in view of the settled position of law as it stands right from the judgment of **Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121** till the recent larger Bench decision of the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and Ors.** decided on 31<sup>st</sup> October, 2017, the claimants would also be entitled for 40% of the income under future prospects for quantification of compensation. Thus, adding 40% of Rs.60,000/- would make the yearly income to Rs.84,000/-. Considering the total number of claimants the deductions to be made would be 1/4th in stead of 1/3rd as assessed by the Tribunal. Deducting 1/4th from Rs.84,000/- would bring the amount to Rs.63,000/- which if multiplied applying the multiplier of 17, the amount would come to Rs.10,71,000/-. Since this Court has assessed the percentage of negligence on the part of the driver of the offending truck at 75%, the claimants shall be entitled for 75% of Rs.10,71,000/- which comes to Rs.8,03,250/-. In addition, in the given facts and circumstances, this Court quantifies a lump sum compensation of Rs.66,750/- towards conventional head to make the total compensation

payable to the claimants at Rs. 8,70,000/- in stead of Rs.3,75,000/- 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 appeal thus stands allowed.

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