

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 733 of 2010**

1. Smt. Reshma Begum, Wd/o late Tasleem, age 44 years.
 2. Imran S/o late Tasleem, age 15 years.
 3. Vicky S/o late Tasleem, age 16 years.
 4. Aashu S/o Tasleem, age 17 years.
- Appellants No.2 to 4 through natural guardian their mother Smt. Reshma Begum,
All are R/o village Shahbad, Distt. Rampur (UP).

---- Appellants**Versus**

1. Mohd. Anwar S/o Mo. Jahur Musalman, age 30 years, R/o Swagat Hotel, Ramoli, Tah. & Distt. Badodara, Gujrat, at present SK Transport Pvt .Ltd. Jalgaon, Maharashtra.
2. SK Translines Pvt. Ltd. 13, Tara Complex, GE Road, Bhilai, Distt. Durg (CG).
3. The New India Insurance Co. Ltd. Through Branch Office, Madina Building, Jail Road, Raipur (CG).

---- Respondents

For Appellants	:	Ms. Sharmila Singhai, Advocate.
For respondent No.3	:	Shri Deepak Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****07.11.2017**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimants seeking enhancement of compensation against the award dated 23.04.2010 passed by the Motor Accident Claims Tribunal Mahasamund, in Claim Case No.134/2009. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.1,07,000/- to the claimants along with interest @ 6 percent per annum from the date of application. While passing the award, the Tribunal has assessed the contributory negligence on the part of the deceased and have apportioned negligence at the ratio of

50:50. Thus, while quantifying the compensation, the Tribunal has quantified compensation of Rs.2,14,000/- of which after deducting 50 percent on account of contributory negligence on the part of deceased, has awarded compensation of Rs.1,07,000/- to the claimants.

2. The respondents No.1&2 driver and owner were ex parte before the Tribunal as well as before this court.
3. Learned counsel for the appellants submits that the finding of contributory negligence assessed by the Tribunal is erroneous inasmuch as there was no material available on record by which negligence on the part of deceased can be established. It was further contended that the income assessed by the Tribunal is also on the lower side and that the income from future prospects has not been taken into consideration while quantifying the compensation. Likewise, the multiplier applied is also not in accordance with principles laid down in case of *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.* 2009 (6) SCC 121. Thus, prayed for enhancement of compensation suitably.
4. Learned counsel for the respondent opposing the appeal submits that since there was head on collision as is reflected from the document produced before the Tribunal, the findings of contributory negligence to the extent of 50:50 cannot be said to be erroneous and the appeal deserves to be rejected. Further, the compensation awarded is also just and proper and no interference is required.
5. Having heard the rival contentions put forth on either side and on

perusal of records, so far as the finding of contributory negligence is concerned, from the records it reflects that except for the oral statement made by the witnesses on behalf of the claimant, there is no material available on record either documentary proof or by any independent witness who has stated that there was negligence on the part of the deceased while driving the motorcycle attributing to the accident. It is only an inference which has been drawn by the Tribunal without there being sufficient evidence in this regard. Thus, the finding of contributory negligence deserves to be and is accordingly set aside.

6. So far as enhancement of compensation is concerned, if we look into the period of accident i.e. November, 2008, indisputably at the relevant point of time even an unskilled labour would have been earning more than Rs.100/- per day which would bring monthly income at 3000/-. Thus, this court assesses the monthly income of the deceased at Rs.3000/- accepting the minimum wages to be Rs.100/- per day.
7. Keeping in view the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimants shall be entitled for 40 percent of the income towards future prospects.
8. Accordingly, accepting the yearly income of the deceased at Rs.36000/- if 40 percent of it is added towards future prospects, the amount would reach to Rs.50,400/-, of which if 50 percent is deducted towards personal expenses considering the fact that

deceased was a bachelor, the income would come to Rs.25,200/-, which if multiplied applying the multiplier of 18, the compensation would reach to Rs.4,53,600/-. Thus, it is ordered that the claimants shall be entitled for Rs.4,53,600/- for loss of dependency.

9. Further, this court is of the opinion that the claimants shall also be entitled for a lump sum compensation of Rs.46,400/- under conventional heads. Thus, the total compensation payable to the claimants would become Rs. 5,00,000/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.5,00,000/- instead of Rs.1,07,000/- as awarded by the Tribunal.
10. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.
11. Accordingly, the appeal of the claimants stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
Judge