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HIGH COURT OF CHHATTISGARH AT BILASPUR**MA No. 529 of 2005**

Ramnik Kotak, S/o. Govind Kotak, aged 60 years, R/o. Padumpur Road, P.S. Basna, District Mahasamund, Chhattisgarh

---- Appellant**Versus**

1. Preet Sagar Ghasiya, S/o. Premlal, Ghasiya, Aged about 25 years, R/o. Village Kankewa, P.S. Saraipali, District Mahasamund, Chhattisgarh
2. Chintamani, S/o. Late Parshu Ram, aged about 42 years, R/o. Village Kankeva, P.S. Saraipali, District Mahasamund, Chhattisgarh

---- Respondents**MAC No. 324 of 2006**

Chintamani, S/o. Late Parshu Ram, aged about 46 years, R/o. Village Kankewa, P.S. Saraipali, District Mahasamund, Chhattisgarh

---- Appellant**Versus**

1. Ramnik Kotak, S/o. Govind Kotak, aged 60 years, R/o. Padumpur Road, P.S. Basna, District Mahasamund, Chhattisgarh
2. Preet Sagar Ghasiya, S/o. Premlal, Ghasiya, Aged about 25 years, R/o. Village Kankewa, P.S. Saraipali, District Mahasamund, Chhattisgarh

---- Respondents

For Respective Appellants	:	Mr. Ajay Sharma, Advocate
	:	Mr. Shikhar Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/09/2017**

1. These are two appeals arising out of the award passed by the 2nd Additional Motor Accident Claims Tribunal, Mahasamund, Chhattisgarh, in Claim Case No.25/2003, decided on 17.01.2005. Vide the said impugned award the Tribunal in a proceeding under Section 166 of Motor Vehicles Act has allowed the claim petition and

have ordered for payment of Rs.62,250/- with interest @ 6% per annum from the date of application.

2. MA No. 529/2005 is an appeal by the claimant seeking enhancement and MAC No. 324/2006 is an appeal preferred by the owner. While passing the said impugned award the Tribunal has fastened the liability of payment of compensation upon the owner of the offending vehicle since the Tractor was not insured. The appellant in MAC No. 324/2006 has challenged the award firstly on the ground that there was no sufficient evidence on record to establish that the appellant herein is the actual owner of the Tractor bearing registration No. MP-23-G-0208 and the Trolley number of which was 0209.
3. According to the appellant it was the respondent No.2, who was the driver-cum-owner of the Tractor and not the appellant. The second ground which has been raised by the appellant is on the quantum. According to the appellant, there was no sufficient prove to establish the age of the deceased and therefore the multiplier which has been applied is on the higher side and the same therefore warrant interference by suitably reducing the compensation.
4. However, perusal of the record would show that the appellant Parshuram who is said to be the owner of the Tractor has not led any evidence to prove that he was not the actual owner of the Tractor and that it was the respondent No.2, who was the owner. Neither has the appellant been able to extract anything in this regard from the Cross Examination. In absence of any evidence, the contention raised by the appellant in the appeal is not sustainable.

5. So far as the age of the deceased-Nilesh is concerned, there is a document, which has been filed in the appeal of the claimant, which is the Higher Secondary School certificate in respect of the deceased, where his date of birth is reflected as 19.03.1968. The appellant does not dispute the said date of birth and as such if we take into account 1968 is a year of birth, thus at the time of the accident i.e. in March, 2002, the appellant must be a 32-34 years and Tribunal for the propose of quantifying the compensation has taken the age of the deceased at 32 years on the basis of the postmortem report and which almost matches with the date of birth as is reflected in the Higher Secondary School certificate of the deceased. In view of the aforesaid facts and circumstances, this Court does not find any strong case made out by the appellant to interfere with the finding of the Tribunal. Thus, the appeal preferred by the owner does not have much force and the same deserves to be and is accordingly dismissed.
6. As regard the appeal which has been filed by the claimant seeking for enhancement, it is the contention that the Tribunal has not taken the proper multiplier while quantifying of compensation. Likewise, it was also the contention of the claimant that the Court below has not taken the income under the head future prospects while calculating the compensation. Likewise, the compensation under the conventional head also is on the lower side and prayed for the suitable enhancement.
7. As regards the calculation of compensation is concerned, the issue involved is no longer ***res integra*** in as much as the principles or

guidelines for calculating the compensation is by now well settled by a series of decisions rendered by the Hon'ble Supreme Court starting from the land mark judgment in the case of ***"Sarla Verma and others vs. Delhi Transport Corporation and another"*** [2009 (6) SCC 121] and all subsequent decisions in this regard and in those decisions till the decision in ***Amrit Bhanu Shali & Others vs. National Insurance Company Limited & Others, 2011(12) SCC 748***, it has been repeatedly held that the multiplier which has to be applied while quantifying the compensation is based upon the age of the deceased or injured and not the age of the claimant. Likewise, it is also well settled that while quantifying the compensation income under the head of future prospects also has to be added.

8. In the instant case, the Tribunal has quantified the monthly income of the deceased at Rs.4,000/-, which in the opinion of this Court does not warrant interference as the same is just and reasonable considering the date of accident. 50% of which if added towards future prospects, the amount becomes Rs.6,000/- i.e. Rs.4,000/- + Rs.2,000/- which if multiplied by 12 gives the early income at Rs.72,000/-. If 50% of which is deducted towards personal expenses since the deceased was a bachelor, the amount comes to Rs.36,000/-. In the instant case considering the age of the deceased to be 32 years on the basis of the postmortem report, the multiplier which has been applied would be that of 16 which when multiplied by Rs.36,000/- gives the figure of Rs.5,76,000/-, which shall be the compensation for loss of dependency. It is ordered accordingly.

9. Further, considering the period of death being March, 2002, this Court is of the opinion that ends of justice would meet if the claimant is awarded a compensation under the conventional head of Rs.24,000/- instead of Rs.4,500/- as was awarded, thus making the total compensation payable at Rs.6,00,000/-.
10. As regards the finding of the contributory negligence is concerned, this Court is of the opinion that the said finding given by the Court below does not appear to be based on any evidence which have come on record, only because the accident occurred because of head on collision by itself may not be sufficient to assume that there was a contributory negligence. It can also be a case, where the vehicle came from the opposite direction of the road and dashes against the vehicle coming on the left side of the road, there has to be sufficient evidence to show the negligence part showing either rash and negligence or at least evidence to the effect that there was sufficient time and also sufficient space available to the person to avoid the accident.
11. In the absence of which applying the principles of *res ipsa locutor* and fixing the contributory negligence would not be justified. The finding of the Tribunal to that extent deserves to be and is accordingly set-aside and it is held that the claimant shall be entitled for the entire compensation awarded.

Sd/-
(P. Sam Koshy)
Judge