

NAFR

**HIGH COURT of CHHATTISGARH, BILASPUR**  
**MAC No.557 of 2008**

1. Smt.Durga Devi Soni W/o Shri Balkishan Soni, aged abut 40 years.
2. Balkishan Soni S/o Late Shri Rameshwarlal Soni, aged abut 44 years.
3. Kishore Soni Minor S/o Shri Balkishan Soni, aged about 14 years
4. R/o Village - Akaltara, Thana - Akaltara, District - Janjgir Champa (C.G.)
5. Vijay Soni S/o Shri Balkishan Soni, aged about 12 years.  
Appellants No.3 & 4 are minors representing through mother Smt. Durga Devi Soni.
6. Anandi Devi Soni Wd/o Late Shri Rameshwarlal Soni, aged about 85 years.  
All R/o Village - Akaltara, Thana - Akaltara, District - Janjgir Champa (C.G.)

**---- Appellants**

**Versus**

1. Shiv Kumar Patel S/o Shri Vishram Singh Patel, aged about 30 years, R/ village Dhuma, Thana, Karamji, Distt. Sidhi (MP).
2. M/s Primenet Global Ltd. 1st Floor, Ring Road No. 2, Gudgaon, District - Raipur (C.G.) Through M/s Prakash Industries Ltd.Through Owner/ Director, New Industrial Area, Ring Road No. 2, Gudgaon, District - Raipur (C.G.)
3. The National Insurance Co. Ltd. Through Branch Manager, Branch Office, Taha Comlex, Vyapar Vihar Road, District - Bilaspur (C.G.)

**---- Respondents**

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| For Appellants       | : | Shri Ravi Bhagat, Advocate. |
| For respondents No.2 | : | Shri Ayaz Naved, Advocate.  |
| For respondent No.3  | : | Shri Anand Gupta, Advocate. |

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

**Order On Board**

**31/10/2017**

1. The present is an appeal filed by the claimants seeking enhancement of compensation under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 28.01.2008 passed by the Ist Additional Motor Accident Claims Tribunal, Bilaspur (for short, the Tribunal) in Claim Case No.184/2007 Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV

Act by the claimants in a death case have awarded compensation of Rs.2,12,450/- after assessing contributory negligence of the deceased to the extent of 30 percent.

2. Learned counsel for the appellants submits that the amount awarded by the Tribunal is on lower side in as much as the income of the deceased was not properly taken into consideration while quantifying the compensation. Likewise, the findings of the contributory negligence is also not proper as there is no evidence to show that accident has occurred because of rash and negligent driving of the deceased. Further, the multiplier applied in the case is not in accordance with the law laid down by the Supreme Court in case of *Sarla Verma and Ors. Vs. Delhi Transport Corporation & Anr.* 2009 (6) SCC 121.
3. Counsel for the respondent however opposing the appeal submits that it is a case where the deceased was travelling on a motorcycle with two more pillion riders and that they were also equally responsible for the said accident and therefore, the finding of the Tribunal cannot be said to be bad in law. He further submits that since the deceased was aged about only 19 years, the income of Rs.3000/- as assessed by the Tribunal also does not warrant any interference.
4. Having heard the counsel on either side and on perusal of records, the undisputed facts are the date of accident; the resultant death of deceased aged about 19 years; the vehicle belonging to the respondents and being insured by the respondent No.3-insurance

company. The only issue left is to see whether the finding of contributory negligence is proper and whether the compensation awarded is just or not.

5. The very fact that there was a head on collision by itself is sufficient indication of there being contributory negligence. Further, to add with the said view is the conduct of the deceased travelling in a motorcycle with two more pillion riders. Under the said circumstances, the findings of contributory negligence of 70:30 arrived at by the Tribunal does not warrant any interference.
6. So far as enhancement of compensation is concerned, the date of accident is month of October, 2006, the deceased was said to have been working under one jewellery shop and was earning some income. Further, what cannot be lost sight is the fact that in the year, 2006 when even an unskilled labour would have been earning somewhere around Rs.200/- a day i.e.Rs.6000/- in a month. Thus, this court considering the factual matrix of the case and also considering the date of accident, assesses the income of the deceased at Rs.6000/- per month instead of Rs.3000/- as assessed by the Tribunal.
7. So far as considering future prospects while quantifying the compensation is concerned, the same by now has become part and parcel of the awards passed by the Tribunals in view of a catena of decisions of Supreme Court starting from the landmark judgment in case of Sarla Verma (Supra) and all subsequent decisions.
8. Thus, accepting the income of the deceased at Rs.6000/- per month, if 50 percent of the same is added towards future prospects, the

amount would become Rs.9000/- of which if 50 percent is deducted towards personal expenses, the amount would come to Rs.4500/- a month i.e. 54000/- yearly, which if multiplied applying the multiplier of 18, the amount would reach to Rs.9,72,000/-. Thus, it is ordered accordingly that the compensation arrived at is Rs.9,72,000/- towards loss of dependency. However, in view of finding of contributory negligence to the extent of 30 percent, the claimants shall be entitled for only 70 percent of the said amount which comes to Rs.6,80,400/-. Thus, it is ordered accordingly that the claimants shall be entitled for Rs.6,80,400/- for loss of dependency.

9. So far as compensation under conventional heads are concerned, keeping in view the decision of the Supreme Court in case of Rajesh & Ors. Vs. Rajbir Singh & Ors.2013(9) SCC 54, this court is of the opinion that ends of justice would meet if a lump sum compensation of Rs.70,000/- is awarded to the claimants. It is ordered accordingly. Thus, the total compensation payable to the claimants would become Rs.7,50,400/-instead of Rs.2,12,450/-. It is ordered accordingly.
10. The said 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 off.

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