

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 624 of 2009

1. Smt. Savitri Sahu Wd/o Late Bhagwas Das aged about 23 years,
 2. Ku. Jagriti, D/o. Late Bhagwan Das, aged about 4 years,
 3. Ku. Bharati D/o. Late Bhagwan Das, aged 1 years,
- All R/o. Power House, ITI Colony, Shahid Veer Narayan Singh Nagar, Chatai Quarter, Bhilai, Tahsil and District Durg (CG)

---- Appellants

Versus

1. Suraj Yadav S/o. Hansnath Yadav, aged about 55 yeas, R/o. Bhindi, P.S. Lari, District Dewariya (UP) Presently R/o. Mominpara, Diamond Harbur, Road No.6, Ramchandra Sao Badi, Kolkata 23 (WB)
 2. Sugriv Yadav, S/o. Shri Surajnath Yadav, R/o. Beltola, Guwahati Aasam.
 3. Puna Das @ Chhotu S/o. Saheb Das Manikpuri, aged about 45 years, R/o. Quarter No.4-D, Street No.12, Sector 11, Khursipar, Bhilai, Tahsil and District Durg (CG)
 4. Sanjay Bhagchandani, S/o. Bhagwan Das Bhagchandani, R/o. E.W.S. 129 Vaishali Nagar, Bhilai, P.S. Supela, Tahsil and District Durg (CG)
 5. The National Insurance Co. Ltd, Through: Division Manager, Aakash Ganga, Supela, Bhilai, District Durg (CG)
 6. Sukhram Sahu, S/o. Late Shri Gangaram Sahu, aged about 60 years,
 7. Smt. Vimla Sahu, W/o. Shri Sukhram Sahu, aged bout 50 years,
 8. Ku. Kunti, D/o. Shri Sukhram Sahu, aged about 18 years,
- All R/o. Power House, ITI Colony, Shahid Veer Narayan Singh Nagar, Chatai Quarter, Bhilai, Tahsil and District Durg (CG)

---- Respondents

For Appellants	:	Mr. Amiyakant Tiwari, Advocate
For Respondent No.5	:	Mr. B.N. Nande, Advocate
For Respondents No. 6, 7 & 8	:	Mr. Arvind Dubey, Advocate

Hon'ble Shri Justice P. Sam Koshy

ORDER ON BOARD

06.07.2017

1. This is an appeal under Section 173 of the Motor Vehicle Act

assailing the award dated 05.09.2008, passed by the 8th Additional Motor Accident Claims Tribunal (F.T.C.) Durg, Chhattisgarh, in Claim Case No. 51/2008. Vide the said impugned award, the Tribunal has awarded a compensation to the claimants of Rs.3,09,500/- with interest @ 9% per annum from the date of application. However, while passing the award the Tribunal gave a finding that the accident arose because of the negligence on the part of the drivers of two vehicles involved in the accident and therefore, it was ordered for sharing the liability of payment of compensation on the owner, driver and Insurance Company of the two vehicles with equal share.

2. It is this award which is under challenged by the claimants/appellants. The contentions of the appellants is that the finding of the Tribunal so far as the contributory negligence is concerned was not proper as there was no sufficient evidence to establish the contributory negligence. It was further contended that the award of the compensation is also on the lower side and the same deserves enhancement in as much as the Tribunal ought to have taken the notional income of the deceased at Rs.3,000/- instead of Rs.2,000/- as has been assessed by the Tribunal. Likewise, the deduction towards the personal expenses also ought to had been $\frac{1}{4}$ instead of $\frac{1}{3}$ as the total number of claimants' dependents under the deceased were six.
3. It was lastly contended that the amount of compensation awarded under the conventional head also is on extremely lower side observing enhancement. The counsel appearing for the respondents opposing the appeal submitted that since it is an appeal by the claimants, the issue pertaining to finding of contributory negligence cannot be challenged by the claimants. It ought to have been challenged by the owner and driver of the two vehicles involved in the accident. Further the contentions of the counsel for the respondents was that the amount of compensation awarded was just and reasonable as it was based upon the evidence which has been laid by the claimants as also the evidence which has come on record on behalf of the respondents. According to the counsel appearing for

each of the respondents the contributory negligence stand established, since there is an evidence on record, which shows that the accident arose when the Matador in which the deceased was traveling dashed from behind. The trailer truck was moving in front of the Matador when the accident occurred. Thus the finding of contributory is apparent and thus prayed for rejection of the appeal by the claimants.

4. Having heard the contentions put forth on either side and on perusal of the record, when we consider the evidence laid by the owner and driver of the Matador as also the other evidence which has come on record, it reflects that the accident arose because of the truck which was moving in front of the Matador and applied break and driver of the Matador could not stop the vehicle immediately and went and dashed the truck from behind. The only reason which the Tribunal has taken for arriving at the findings of contributory negligence is that when the Truck which was moving in front of the Matador had applied sudden break, the driver of the Matador also should have applied break instantly. Therefore the Tribunal drew an inference that the Matador must have been running at a very high speed and i.e. the reason why the driver of the Matador could not stop the vehicle. It was the presumption of the Tribunal that the driver of the Matador could not stop the Matador immediately when the Truck moving ahead had stopped the said Truck suddenly. Apart from the said findings based on the assumption there is no strong, sufficient, cogent evidence brought before the Tribunal to establish the contributory negligence part. In view of the evidence which have come on record in respect of the Truck moving in front of the Matador applied sudden break and that there was no evidence in rebuttal neither is there any evidence to disprove the said contentions and in addition the evidence put forth by the owner and driver of the Matador, it cannot be presumed that there was any sort of negligence on the part of the driver of the Matador. It is not a case where the driver of the Matador had hit a stationery truck parked by the side of the road. When a vehicle in front moves it cannot be presumed that it would be suddenly stopped middle of the road.

Thus the findings of the contributory negligence part deserves to be and is accordingly set-aside and the payment of the entire compensation would get fasten upon the respondent No.5-the National insurance Company Limited.

5. So far as the compensation part is concerned, if we look into the factual aspect of the case, the deceased at the relevant point of accident was 24 years of age. The date of accident was 16.11.2002, he was working as a labour. The claimants themselves have pleaded before the Tribunal that he used to give them Rs.2,000/- in a month. Considering the facts that the accident took place in November, 2002, it is anybody's guess that at that relevant point of time the minimum wages of a person would have been around at Rs.100/- a day which makes it Rs.3,000/- a month and Rs.36,000/- as his annual income. It could be a case where the deceased used to pay the claimants Rs.2,000/- a month from which they must have presumed that this was the monthly income of the deceased.
6. In view of the same, this Court has no hesitation in reaching to the conclusion that so far as the quantification of compensation was concerned, the Tribunal ought to have accepted the monthly income of the deceased to be Rs.3,000/- in month and the annual income to be Rs.36,000/-. What is also worthwhile to take note is that the income under future prospects has also not been considered by the Tribunal for deciding the compensation which also ought to have been added and considering the age of the deceased the income under this head should have been added by 50%. Having not done so the impugned award does not seem to be justified and it is ordered accordingly. The annual income being assessed Rs.36,000/- if 50% of the same is added towards future prospects, the sum total would become Rs.54,000/- as yearly income of which if 1/4th is deducted towards personal expenses instead of 1/3 as has been taken by the Tribunal as a number of claimants being more personal expenses would get reduced from 1/3rd to 1/4th. Accordingly to the judgment of the Supreme Court in case of **"Sarla Verma & Ors vs Delhi Transport Corp. & Anr"** (2009) 6 SCC 121). Thus, if 1/4th

from Rs.54,000/- i.e. Rs.13,500/- is deducted, the annual income would get reduced to Rs.40,500/-. If the same is multiplied by applying the multiplier of 18, the amount would become Rs.7,29,000/-. Likewise the compensation awarded under other conventional heads are also on the lower side and considering the relevant decisions of the Supreme Court on the subject, this Court is of the opinion that the ends of justice would meet if the compensation awarded that of Rs.19,500/- to be too meager an amount and the same deserves to be enhanced by a lump-sum amount of Rs.50,000/-. It is ordered accordingly. Thus the total amount of compensation payable to the claimants would become Rs.7,79,000/- instead of Rs.3,09,500/- and the enhanced amount shall also carry the interest at the same rate as has been awarded by the Tribunal in its award. The entire compensation shall have to be paid by the Respondent No.5-Insurance Company.

Sd/-
(P. Sam Koshy)
Judge