

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 559 of 2014

1. Smt. Sukhbai Mahilange, W/o Late Bhaduram Mahilange, aged about 55 years, R/o Village Baputola, Post Office & Police Station Chichola, District Rajnandgaon, CG

Present R/o Teen Darshan Mandir Camp 1, Bhilai, District Durg, CG

---- Appellant/Claimant(Mother of the deceased

Versus

1. Smt. Kajla Mahilange, W/o Late Pardesh Ram Mahilange, aged about 34 years, R/o Village Baputola, Post Office & Police Station Chichola, District Rajnandgaon (CG)

Respondent /wife of the deceased

2. Ramesh Rajput S/o Gaur Singh Rajput, aged about (Not mentioned) R/o Fafa Marg, Gendatola, Tahsil & District, Rajnandgaon, CG

Respondent (Driver)

3. Avinash Rajput S/o B.S. Rajput, aged about (Not mentioned) R/o Village Churiya, Post Office & Police Station Churiya, Tahsil & District Rajnandgaon

Respondent (Owner)

4. The National Insurance Company Limited through Branch Manager, Branch Office, Akashganga Supela, Bhilai, Police Station Bhilai, Post Office – Bhilai, District Durg, CG

---- Respondent/Insurer

For Appellant	-	Shri R.K. Pali, Advocate.
For Respondents 1 to 3	-	None appeared.
For Respondent No.4	-	Shri B.N. Nande, Advocate

Hon'ble Shri Justice Pritinker Diwaker and Hon'ble Justice R.P. Sharma

Order on Board

24 /07/2017

This appeal arises out of the award dated 12.1.2012 passed by Motor Accident Claims Tribunal (for short the "Tribunal") Rajnandgaon in Claim Case No. 20/2011 awarding a compensation of Rs. 5,55,000/- in favour of the claimants - the mother and wife of the deceased.

2. Facts of the case in brief are that on 19.4.2010 when Pardesh Ram (since deceased) along with his wife - Kajala Mahilange and minor daughter - Jaski was going on his motorcycle bearing registration No. CG/08/F-1044, a mini-bus bearing registration No. CG/08/ZA-3060 driven by respondent No.1 herein in a rash and negligent manner came there and hit his vehicle resulting in on-the-spot death of Pardesh Ram and his daughter, and causing fracture of thigh bone of his wife.

3. A claim petition was filed by the claimants who happen to be the mother and wife of the deceased claiming a compensation of Rs. 15,85,000/- *inter alia* pleading that the deceased at the relevant time was aged about 35 years, and being a registered medical practitioner he was earning Rs. 10,000/- per month.

4. Pleadings of the claimants have, however, been denied by the respondent/insurance company.

5. After evaluating the evidence available on record, the Tribunal has assessed the compensation of Rs. 7,40,000/- in favour of the claimants taking the monthly income of the deceased as Rs. 6000/- per month, (annual being 72,000/-). In the process of determining the compensation, the Tribunal has deducted 1/3rd of the annual income of the deceased towards his personal expenses

which comes to Rs. 24,000/- and thus the annual loss of dependency which the deceased might be spending on the claimants has been taken as Rs. 48,000/-. Total loss of dependency by applying the multiplier of 15 has thus been assessed as Rs. 07,20,000/-. To say here, the multiplier of 15 taken by the Tribunal is not correct which looking to the age of the deceased i.e. 35 years at the relevant time, should have been 16. There is also a finding of the Tribunal to the effect that the driver of offending vehicle was negligent in driving the vehicle to the extent of 75% and thus has slapped 25% contributory negligence on the deceased also which ultimately led to the accident and doing so the net loss of dependency has been assessed at Rs. 5,55,000/-. Hence this appeal for enhancement.

6. Counsel for the appellant submits that the finding recorded by the Tribunal in slapping contributory negligence on the deceased to the extent of 25% is erroneous and not in accordance with law as except the driver there is no independent witness to prove the same. On the contrary, according to the counsel for the appellant/claimant, it is the offending vehicle which was being driven negligently and rashly causing the accident in question involving the death of Pardesh Ram. He submits that the Tribunal has also fallen in error in not awarding anything towards the future prospect of the deceased, and likewise, the amount awarded under the conventional heads is also contended to be quite inadequate and deserves to be suitably enhanced.

7. On the other hand, counsel for the respondent/insurance company supports the award impugned.

8. Heard counsel for the parties and perused the documents on record.

9. From the pleadings of the respective parties and the overall evidence on record it is clear that the accident occurred with the offending vehicle which was insured with respondent No.3 and was being driven by respondent No. 2. Evidence further goes to show that after being hit by the offending vehicle Pardesh Ram died on the spot. Since there is no concrete evidence as to the income of the deceased at the relevant time, the Tribunal appears to be justified in taking his monthly income as Rs. 6000/-, but at the same time, it has gone wrong in not considering the future prospects and not awarding the compensation on that head. Looking to the facts and circumstances of the case and the fact that at the relevant time, the deceased according to the pleadings, was aged about 35 years, this Court thinks it appropriate to add 50% in his annual income towards future prospects and having done that, the same is assessed at Rs. 1,08,000/- and after deducting 1/3 (one third) thereof which he might be spending on himself the annual loss of dependency is determined at Rs. 72,000/- (1,08,000 - 36,000) which with the application of multiplier of 16 makes the total loss of dependency as Rs. 11,52,000/-. In addition to this, this Court thinks it just and proper to award a lump sum amount of Rs. 1,50,000/- on the conventional heads like loss of consortium, loss of estate and funeral expenses. It is done accordingly, taking the total awardable compensation to Rs. 13,02,000/-.

10. Thus, the total compensation including the amount awarded on conventional heads comes to Rs. 13,02,000/- i.e. (11,52,000 +

1,50,000). The Tribunal has already awarded a compensation of Rs. 5,55,000/- and if that is deducted, the enhanced compensation comes to Rs. 07,47,000/- which the claimants are entitled to receive with interest @ 9% per annum from the date of application till realization.

11. Here in the appeal, claimant Smt. Sukhbai Mahilange has come against the impugned award passed in claim case No. 20/2011 where wife of the deceased Smt. Kajla Mahilange was also one of the claimants. Though the Tribunal has decided the claim case and awarded the compensation, the apportionment part has been left untouched. Therefore, in the larger interest of justice and keeping in mind the fact that being the wife of the deceased, claimant Smt. Kajla Mahilange is the biggest sufferer on account of the untimely demise of her husband, this Court holds that 70% of the awarded sum which comes to Rs. 09,11,400/- shall go to her and remaining 30% thereof which comes to Rs. 3,90,600/- to mother (the appellant herein). The amount paid, if any, shall be adjustable in the enhanced sum.

12. Appeal is thus allowed in part with the modification and observation in the award impugned as indicated above.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge