

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 699 of 2013

1. S.A. Singh S/o Late B.D. Singh Aged About 78 Years R/o Plot No. 11, Sadan No. 2, B Sector, Panchshil Housing Society, Borsi, Durg, P.S. Pulgaon, Tah. Durg, Distt. Durg C.G.
2. Smt. Martha Singh W/o S.A. Singh Aged About 75 Years R/o Plot No. 11, Sadan No. 2, B Sector, Panchshil Housing Society, Borsi, Durg, P.S. Pulgaon, Tah. Durg, Distt. Durg C.G.
3. Smt. Neeta Singh W/o Late Sandeep Singh Aged About 46 Years R/o Plot No. 11, Sadan No. 2, B Sector, Panchshil Housing Society, Borsi, Durg, P.S. Pulgaon, Tah. Durg, Distt. Durg C.G.
4. Ku. Aradhna Singh D/o Late Sandeep Singh Aged About 18 Years R/o Plot No. 11, Sadan No. 2, B Sector, Panchshil Housing Society, Borsi, Durg, P.S. Pulgaon, Tah. Durg, Distt. Durg C.G.
5. Ku. Akansha Singh D/o Late Sandeep Singh Aged About 18 Years R/o Plot No. 11, Sadan No. 2, B Sector, Panchshil Housing Society, Borsi, Durg, P.S. Pulgaon, Tah. Durg, Distt. Durg C.G.

---- Appellants

Versus

1. Prakash Chand Sahu S/o Harish Sahu Aged About 34 Years R/o Dadarjhor, P.S. Nayapara, Rajim, Distt. Raipur C.G.
2. Rajiv Mantri S/o Dr. Ravi Mantri R/o Shailendra Nagar, Raipur, Tah. And Distt. Raipur C.G.
3. The Oriental Insu.Co.Ltd. Thru- Divisional Manager, Division Office, Near Rajendra Park, G.E. Road, Durg, Tah. And Distt. Durg C.G.

---- Respondents

For Appellants	:	Shri Raghavendra Pradhan, Advocate.
For Respondent No.1 & 2	:	None.
For Respondent No. 3	:	Shri Anumeh Shrivastava, Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

Pritinker Diwaker, J

18/07/2017

1. This appeal arises out of the award dated 30.03.2013 passed by 1st Additional Motor Accident Claims Tribunal (for short the "Tribunal") Durg in Claim Case No.221/2011 awarding a compensation of Rs.25,91,956/- in favour of the appellants/claimants for the death of Sandip Singh.
2. Facts of the case in brief are that on 21.12.2010 when deceased along with his family members were coming from Rajim to Raipur on his Accent Car bearing registration No.CG-05-A-5551, near village Jhanki a truck dumper bearing registration No.CG-04-ZC-8376 driven by respondent No.1 herein, in a rash and negligent manner, came from opposite side and hit his car as a result of which he died in the hospital during treatment. A claim petition was filed by the appellants/claimants who happen to be the legal heirs of the deceased claiming a compensation of Rs.67,58,513/- *inter alia* pleading that the deceased at the relevant time was aged about 44 years, he was working in Central Bank of India, Branch Bhilai as a Cashier and earning Rs.33,581/- per month.

3. Pleading of the claimants have, however, been denied by the respondent/insurance company.
4. After evaluating the evidence available on record, the Tribunal has though assessed the compensation at Rs.51,83,912/- but after holding the deceased having contributory negligence, awarded Rs.25,91,956/- to the appellants/claimants as compensation along with interest at the rate of 6% from the date of application. Hence, this appeal for enhancement.
5. Counsel for the appellants/claimants submits that the finding recorded by the Tribunal holding the deceased to have contributory negligence is not in accordance with law as no evidence has been adduced in this regard by the Insurance Company or even by the owner and the driver. He further submits that future prospects have not been considered by the Tribunal and the amount awarded under the conventional heads is also quite inadequate.
6. On the other hand, counsel for the respondent/insurance company supports the award impugned and submits that the accident occurred on account of the negligence of the deceased himself and therefore the claimants are not entitled for any enhancement in the awarded sum. According to the counsel for the Insurance Company even the multiplier of 14 applied by the Tribunal is

erroneous which in fact should have been 16.

7. Heard counsel for the parties and perused the documents on record.
8. 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.1. Evidence further goes to show that after being hit by the offending vehicle Sandip Singh died in the hospital. Thus keeping all these facts in mind though the Tribunal assessed the compensation as Rs.51,83,912/- but at the same time holding the deceased to have contributory negligence for the accident awarded only 50% of the same which comes to Rs.25,91,956/-. The finding recorded by the Tribunal holding the deceased to have contributory negligence for the accident is quite erroneous as it has neither been proved by the insurance company nor even by the driver or the owner by leading cogent and reliable evidence. In respect of contributory negligence on the part of the victim the law holding the field is that the burden of proof regarding breach of policy conditions or contributory negligence lies on the insurance company as has been held by the Apex Court in the case of ***Usha Rajkhowa v. Paramount Industries (2009) 14 SCC***

71 and also in the case of ***Minu Rout v. Satya Pradyumna Mohapatra (2013) 10 SCC 695***. In this case though the insurance company has pleaded that the accident took place due to negligence on the part of the deceased but no evidence in support of such pleading has been adduced by it and in these circumstances and the law laid down by the Apex Court referred to above, it cannot be said that the victim was having contributory negligence leading to the accident resultant death. Furthermore, the inference drawn by the Tribunal on the basis of spot map to hold the contributory negligence of the deceased is also imaginary and in the absence of any evidence the same cannot be sustained. Therefore, such finding being against the settled legal position is not sustainable in the eye of law and accordingly it is hereby set aside. In addition to this, the amount awarded under the conventional heads also appears to be inadequate and requires suitable enhancement in this appeal. Therefore, we propose to recompute the compensation.

9. Accordingly, the monthly income of the deceased is taken to be Rs.33,581/- (as per salary certificate Ex.P-7) and since at the time of accident, the deceased was aged about 42 years, loss of future income can be assessed to be 30% of the total income which comes to

Rs.10,074/- per month and accordingly, the net monthly income of the deceased comes to Rs.43,655/- (33581+10074) (rounded off to Rs.43,700/-) and as such, annual income of the deceased comes to Rs.5,24,400/- (43700x12). The deceased was an income tax payee, therefore, a sum of Rs.45,912/- is liable to be deducted from his annual income and accordingly the total annual income of the deceased comes to Rs.4,78,488/-. After deducting one-fourth from the annual income of the deceased towards his personal expenses, the annual loss of dependency comes to Rs.3,58,886/- (1/4th of 4,78,488). By applying multiplier of 14 to the annual income of the deceased, the total loss of dependency would come to Rs.50,24,124/- (3,58,866 x 14).

10.At the same time, the amount awarded under the conventional heads also appears to be insufficient and being so is required to be enhanced suitably. The amount awarded by the Tribunal and the one enhanced by this Court are clear from the following table:-

Head	Amount awarded	Amount enhanced
Loss of Consortium	5,000/-	1,00,000/-
Love and affection	5,000/-	50,000/-
Funeral Expenses	5,000/-	50,000/-
	Total	2,00,000/-

11. Thus, the total compensation including the amount awarded on conventional heads comes to Rs.52,24,124/- (50,24,124 + 2,00,000) which the claimants are entitled to receive with interest @ 9% per annum from the date of filing of claim application. The amount already received by the claimants, if any, shall be adjustable in the enhanced sum.

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

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge