

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 567 OF 2014

1. Bhagat Ram, S/o Manjhi, aged about 65 years
 2. Belmati, W/o Bhagatram, aged about 60 years
- Both are R/o Village- Roomkera, Police Station and Tahsil- Gharghoda, District Raigarh (C.G.)

... Appellants

versus

1. Rahul Agrawal, S/o Rajkumar Agrawal, occupation-Vehicle Owner, R/o Ward No.9, Sadar Hatri, Lal Tanki, Raigarh, District Raigarh (C.G.)
2. Chandulal S/o Ganesh Ram Uraon occupation- Vehicle Driver, R/o Dhimrapur, Jagatpur, District Raigarh (C.G.)
3. The Oriental Insurance Company Limited, through the Branch Manager, the Oriental Insurance Company Limited, Divisional Office, Atwari Bazar, Naya Ganj, Raigarh, District Raigarh (C.G.)
4. Sewa Ram S/o Manjhi, Caste-Bhumiya, occupation- Labour, R/o Roomkera, P.S. & Tah. Gharghoda, Distt. Raigarh (C.G.)
5. Smt. Gulavati W/o Sewaram, Caste- Bhumiya, occupation- Agriculture Labour, R/o Roomkera, P.S. & Tahsil Gharghoda, District Raigarh (C.G.)
6. Shiv Prasad S/o Bhagatram, aged about 24 years, R/o Village- Roomkera, P.S. & Tahsil Gharghoda, District Raigarh (C.G.)
7. Ku. Sahodra D/o Bhagatram, aged about 20 years, Village R/o Roomkera, P.S. & Tahsil Gharghoda, District Raigarh (C.G.)
8. Smt. Mamta Khandait W/o Gangadhar Khandait, Caste- Bhumiya, aged about 22 years, occupation- dependant, R/o Village- Roomkera, P.S. & Tahsil Gharghoda, District Raigarh (C.G.)

... Respondents

MISC. APPEAL (C) NO. 486 OF 2014

Smt. Mamta Khandait W/o Shri Gangadhar Khandait, aged about 22 years, occupation- dependant, R/o Village- Roomkera, P.S. & Tahsil Gharghoda, Civil and Revenue District Raigarh (C.G.)

... Appellant

versus

1. Rahul Agrawal, S/o Rajkumar Agrawal, R/o Ward No.9, Sadar Hatri, Lal Tanki, Raigarh, Tahsil and District Raigarh (C.G.)
 2. Chandulal S/o Ganesh Ram Uraon, occupation- owner of vehicle, R/o Fatahamuda, Banjinpali, Chauki- Jute Mill, Raigarh, Tahsil & District Raigarh (C.G.)
 3. The Oriental Insurance Company Limited, through the Branch Manager, the Oriental Insurance Company Limited, Divisional Office, Atwari Bazar, Naya Ganj, Raigarh, Tah. & District Raigarh (C.G.)
 4. Sewa Ram S/o Manjhi, occupation- Labour, R/o Village- Roomkera, P.S. & Tah. Gharghoda, Civil & Revenue Distt. Raigarh (C.G.)
 5. Smt. Gulavati W/o Sewaram, occupation- Labour, R/o Village- Roomkera, P.S. & Tahsil Gharghoda, Civil & Revenue Dist. Raigarh (C.G.)
 6. Bhagat Ram, S/o Manjhi, aged about 65 years
 7. Belmati W/o Bhagat Ram, aged 60 years
 8. Shiv Prasad S/o Bhagat Ram, aged about 24 years
 9. Ku. Sahodra D/o Bhagat Ram, aged about 20 years
- S. No. 6 to 9 are R/o Village Roomkera, P.S. & Tahsil Gharghoda, Civil & Revenue District Raigarh (C.G.)

... Respondents

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- Mr. M.K. Jaiswal, Advocate, for the Appellants in MAC No. 567/2014.
 - Mr. M.K. Sinha, Advocate, for the Appellant in MAC No. 486/2014.
 - Mr. H.S. Patel, Advocate, for Respondent No.3 in MAC No.567/2014.
 - Mr. N.K. Malviya, Advocate, for Respondent No.3 in MAC No.486/2014.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/10/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of award dated 27.1.2014 passed by the Motor Accident Claims Tribunal, Raigarh, in Claim Case No. 02/2012.
2. Vide the impugned award dated 27.1.2014, the learned Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in a death case, after assessing contributory negligence to the tune of 50% on the part of the deceased, has awarded a compensation of Rs. 2,44,000/- to the appellants in the present two appeals, with interest thereon at the rate of 6% per annum from the date of presentation of the claim application.
3. Initially, two claim applications were filed before the Tribunal. One by the widowed wife of the deceased, namely, Smt. Mamta Khandait, and the second claim application was filed by the parents of the deceased, namely, Bhagat Ram and Belmati. However, the learned Tribunal after merging/clubbing both the claim applications, decided the same on merits and passed the impugned award dated 27.1.2014 making suitable apportionment of the compensation.
4. MAC No. 567/2014 is an appeal preferred by the parents of the deceased and MAC No. 486/2014 has been filed by the widowed wife of the deceased, seeking enhancement of the award.
5. It is a case where the deceased-Gangadhar Khandait met with an accidental death on 23.6.2011.

6. Contention of Shri M.K. Jaiswal and Shri M.K. Sinha, learned counsels appearing for the respective appellants, is that the deceased in the instant case was working as a mechanical engineer at the Jindal Steel & Power Limited, Raigarh and was drawing a salary of more than Rs.18,000/- per month at the time of accident. The income assessed by the learned Tribunal while quantifying the compensation is unreasonably low. The multiplier applied is also erroneous. The finding of contributory negligence also is not sustainable as the only ground of contributory negligence is that there were three persons travelling on the motorcycle. They thus prayed for the amount awarded to be suitably enhanced.

7. On the other side, the contention of Shri H.S. Patel and Shri N.K. Malviya, learned counsels appearing for respondent no.3-insurance company in the two appeals, is that there is no scope of enhancement of the compensation awarded as the award seems to be in accordance with the evidence which have been led by the claimants. According to them, the claimants have not produced any sufficient evidence to prove the income of the deceased and that there is no document also in this regard to prove and establish that the deceased was earning more than Rs.18,000/- a month and thus prayed for the rejection of the appeals.

8. Having considered the rival contentions put forth on either side and on perusal of the record, this Court is of the opinion that so far as the employment of the deceased is concerned it has been sufficiently proved by the claimants by leading evidence of a colleague of the deceased, namely, Mahendra Sahu, who has deposed that the deceased was working as an Engineer at Jindal Steel & Power Limited, Raigarh.

9. So far as the income of the deceased is concerned, though there is no documentary proof to establish the income of the deceased but it is proved that he was working as an Engineer at Jindal Steel & Power

Limited, Raigarh. This Court is of the opinion that considering the fact that it is an accident of the year 2011, undoubtedly, the deceased must have been drawing a salary of more than Rs.10,000/- a month and for all practical purposes the income of the deceased had to be assessed at least Rs.10,000/- instead of Rs.5000/- as assessed by the learned Tribunal. It is accordingly ordered so.

10. It is further found that the learned Tribunal also while quantifying the compensation has not taken into account the future prospects, which by now is a well established component of compensation.

11. So far as the multiplier is concerned, applying the principles laid down by the Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and Another, 2009 (6) SCC 121**, the multiplier applied in the instant case considering the age of the deceased would be 16 instead of 12 as applied by the learned Tribunal.

12. Likewise, applying the principles laid down by the Hon'ble Supreme Court in the case of **Rajesh and Others v. Rajbir Singh and Others, 2013 (9) SCC 54**, the appellants-claimants being the widow and parents of the deceased would also be entitled for a compensation under the conventional heads of Rs.1,25,000/- instead of Rs.4000/- as awarded by the learned Tribunal.

13. Thus, accepting Rs.10,000/- as the monthly income of the deceased, the yearly income would come to Rs. 1,20,000/- of which if 50% is added towards future prospects, i.e. Rs.60,000/-, the yearly income of the deceased would come to Rs.1,80,000/- of which if 1/3rd, i.e., Rs.60,000/-, is deducted towards personal expenses, the remaining amount would be Rs. 1,20,000/- which if multiplied by applying the multiplier of 16, the amount towards the loss of dependency would come Rs. 19,20,000/- to which if Rs.1,25,000/- is added towards conventional

heads, the same would become Rs.20,45,000/-. It is thus ordered that the appellants shall be entitled to get a total compensation of Rs. 20,45,000/-.

14. So far as the contributory negligence which has been assessed by the learned Tribunal is concerned, the same seems to be erroneous for the reason that the law in this regard is well settled by a catena of decisions, particularly in the light of the Full Bench decision of the Madhya Pradesh High Court in the case of **Devisingh v. Vikramsingh & Others, AIR 2008 MP 18**, wherein it has been held that merely because there were three persons travelling on a motorcycle by itself cannot be attributed as a reason for assessing contributory negligence. Thus, the finding of the Tribunal to this extent deserves to be and is accordingly set aside. In addition, the claim case also cannot be brought under the purview of contributory negligence, for the reason that the deceased was a pillion rider on the motorcycle and for him it would be a case of composite negligence. Thus, for this reason also, the finding of the Tribunal in this regard would not be sustainable and is accordingly set aside.

15. This Court also in a recent decision rendered in the case of **Jageshwar Dhiwar v. Salim Khan & Others**, decided on 7.9.2017 in M.A.C. No. 601 of 2006, applying the judgment of **Devisingh** (supra) has interfered with a similar finding of the Motor Vehicle Claims Tribunal.

16. The finding of contributory negligence assessed by the learned Tribunal thus deserves to be and is accordingly set aside and the appellants are thus held to be entitled for the entire compensation as assessed by this Court in the preceding paragraph.

17. In the result, the appeals are allowed and the impugned award stands modified to the extent that the appellants-claimants shall be entitled for the entire compensation of Rs. 20,45,000/- as assessed by this Court, with interest thereon at the same rate of 6% per annum as has been

awarded by the learned Tribunal. The amount of compensation assessed shall be distributed in the same proportion as has been apportioned by the learned Tribunal, that is, the mother and father of the deceased would be entitled to get a compensation of Rs. 6,40,000/- each and the widowed wife of the deceased would be entitled for a compensation of Rs. 7,65,000/-. Each of the claimants shall be entitled for interest that would accrue on the total amount on their respective share.

/sharad/

Sd/-
(P. Sam Koshy)
Judge