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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 619 of 2014

1. Smt. Jaishree Gupta W/o late Hemant Gupta aged about 35 years, R/o Durpa Road, Korba, Tah. and Distt. Korba C.G.
2. Ayush Gupta S/o Late Hemant Gupta aged about 11 years, Minor, through mother Smt. Jaishri Gupta, R/o Durpa Road, Korba, Tah. and Distt. Korba C.G.
3. Badri Lal Gupta S/o Late Rajnath Gupta aged about 65 years, R/o Durpa Road, Korba, Tah. and Distt. Korba C.G.
4. Smt. Suman Gupta D/o Badri Lal Gupta aged about 60 years, R/o Durpa Road, Korba, Tah. and Distt. Korba C.G.
5. Smt. Rukhmani Gupta W/o Late Rajnath Gupta aged about 80 years, R/o Durpa Road, Korba, Tah. and Distt. Korba C.G.

---- Appellants

Versus

1. Dev Kumar Markam S/o Man Singh Markam aged about 25 years, R/o Bandhakhar Pali, Distt. Korba C.G.
2. Gopal Agrawal S/o Banwari Lal Agrawal R/o M/s Gourav Construction Company, Agroha Marg, Korba, Thru- K.K. Modi, In Front of Sbi Champa, Distt. Janjgir-Champa C.G.
3. The Oriental Insu.Co.Ltd. Thru- Branch Manager, The Oriental Insu.Co.Ltd., Commercial Complex, Transport Nagar, Tah. and Distt. Korba C.G.

---- Respondents

For Appellants : Shri Sanjay Patel, Advocate
For Respondent no.3 : Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

17/07/2017

Present is an Claimant's appeal under Section 173 of the Motor Vehicles Act by the claimants seeking for enhancement of the award dated 10.04.2014 passed by the Additional Motor Accident Claims Tribunal (FTC) Korba in Claim Case No.41/2013.

2. The brief fact of the case is that on 12.02.2011 when the deceased Hemant Gupta was going along with one Dharmendra Kumar Gupta on a Santro Car bearing registration No. CG 12D 5338, was hit by a trailer bearing registration No. CG11AB 0302, belonging to respondent no.2 driven by

respondent no.1 and was insured with respondent no.3 Oriental Insurance Company Limited. As a result of the accident, Hemant Ku. Gupta succumbed to the injuries he sustained in the said accident.

3. The Tribunal considering the evidences which have come on record and the pleadings vide impugned award dated 10.04.2014 awarded an amount of Rs. 8,88,000/- as compensation to the claimants.

4. It is this award which is under challenge in the present appeal.

5. Counsel for the appellants submits that the impugned award is bad in law to the extent that the amount of compensation awarded is on the lower side. In addition, what is also challenged is the finding of the Tribunal 50% compensation be deducted towards contributory negligence. According to the counsel for the appellants, since the deceased Hemant Ku. Gupta was not driving the vehicle which was involved in the accident but was only travelling in the Santro car which met with an accident and which was being driven by another person, the deduction under the contributory negligence ordered by the Tribunal is bad in law. He submits that the quantum of compensation awarded also is liable to be enhanced taking into consideration the fact that the deduction towards personal expenses has be taken as 1/3rd whereas it ought to have been 1/4th as there were five persons dependent upon the deceased. Likewise, it was also submitted that the amount of compensation of Rs.20,000/- under the other heads is also on the lower side and the same deserves to be enhanced suitably considering the judgment of the Supreme Court pronounced in the recent past. The appellant thus, prayed for the award being suitably enhanced.

6. Counsel for the Insurance Company, however, opposing the appeal submits that the amount of compensation awarded by the Tribunal is fair and reasonable and does not warrant any interference. Since there is a finding that the accident occurred because of the rash and negligent driving of the driver of the two vehicles involved in the accident, the deduction made towards

contributory negligence is also proper. Hence, prayed that the appeal deserves to be rejected.

7. Having considered the rival contentions put forth on either side and on perusal of the record, the first contention of the appellants so far as the deduction made under the contributory negligence is concerned, it is settled principle of law that if the deceased or the injured was not driving the vehicle involved in the accident, he cannot be made liable for any contributory negligence for the accident occurred. This view stands fortified by the decision of the Hon'ble Supreme Court in the case of **T. O. Anthony Vs. Karvarnan and others** reported in **(2008) 3 SCC 748**. The same view has also been taken by the Full Bench of the Madhya Pradesh High Court in **2007 (4) MPHT 535** in the case of **Dev Singh Vs. Vikram Singh and others**. In view of the same, the said finding of the Tribunal so far as the contributory negligence is concerned stands quashed. It is ordered that the claimants would be entitled for the entire amount of compensation without any deduction of contributory negligence.

8. Further considering the total number of persons dependent upon the deceased as also the ratio of law laid down in the case of **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121,** the deduction ought to have been 1/4th in stead of 1/3rd as has been quantified by the Tribunal. It is ordered accordingly. Accordingly, the amount of compensation payable for the loss of income would be Rs.19,40,490 in stead of Rs.17,24,940/- Similarly, the amount of compensation paid under the other heads of Rs.10,000/- each towards funeral expenses, love and affection and pain and suffering definitely is on the lower side considering the status of the deceased as also the income tax return that was produced before the Tribunal coupled with the fact that the incident was of the year 2011. Thus, the said amount also deserves to be and is accordingly enhanced to Rs.1,25,000/-, in stead of Rs.20,000/- awarded by the Tribunal. In all, the total amount of

compensation payable to the claimants would be Rs.20,65,490/- in stead of Rs.8,88,000/-. Thus, the claimants would be entitled for a further compensation of Rs.11,77,490/- in addition to the amount of Rs.8,88,000/- awarded by the Tribunal. The said amount shall also carry interest at the same rate as has been awarded by the Tribunal.

9. With the aforesaid modification to the impugned award, the appeal stands allowed.

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

Bhola