

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 721 of 2015**

1. Smt. Bharti Devi Kashyap Wd/o Late Om Prakash Kashyap Aged About 39 Years R/o Qtr. No. M-265, 15 Block, Sec, Korba, District- Korba, Chhattisgarh
2. Ku. Neha Kashyap D/o. Late Om Prakash Kashyap Aged About 22 Years R/o Qtr. No. M-265, 15 Block, Secl, Korba, District- Korba, Chhattisgarh
3. Deepak Kashyap S/o Late Om Prakash Kashyap Aged About 20 Years R/o Qtr. No. M-265, 15 Block, Secl, Korba, District- Korba, Chhattisgarh
4. Srinivas Kashyap S/o Late Om Prakash Kashyap Aged About 14 Years Minor Through Ther Natural Guardian Mother Smt. Bharti Devi Kashyap, R/o Qtr. No. M-265, 15 Block, Secl, Korba, District- Korba, Chhattisgarh
5. Aman Kashyap S/o Late Om Prakash Kashyap Aged About 12 Years Minor Through Ther Natural Guardian Mother Smt. Bharti Devi Kashyap, R/o Qtr. No. M-265, 15 Block, Secl, Korba, District- Korba, Chhattisgarh
6. Smt. Shanti Devi Kashyap W/o Radheshyam Aged About 66 Years R/o Berpali Chowk, Champa, Tahsil Champa, District Janjgir-Champa, Chhattisgarh

---- Petitioners**Versus**

1. Tilakdhari Yadav And Ors. S/o Late Shri Ram Naresh Yadav R/o Jamaor, P.S. Mahrajganj, District- Jounpur, U.P. Presently R/o Prakash Industries Limited Champa, District- Janjgir-Champa, Chhattisgarh
2. Primenet Glob Limited New Industrial Area, Ring Road No. 2, Gogaon Raipur, Presently R/o Prakash Industries Limited Champa, District- Janjgi-Champa, Chhattisgarh
3. National Insurance Company Ltd. Through : Branch Manager, Minu Complex, Kosabadi, Korba, Tahsil And District Korba, Chhattisgarh

---- Respondents

For Petitioner : Shri Mirza Kaiser Baeg, Advocate.

For Respondents : Shri Qamrul Aziz, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

16/08/2017

Heard.

1. This appeal has been brought for enhancement of compensation awarded in Claim Case No.65/2011, by Motor Accident Claims Tribunal, Korba, Chhattisgarh by award dated 12.03.2015.

2. The deceased Omprakash along with Melu Ram was riding motorcycle C.G.-11 BB/3339 and Melu Ram was the pillion rider. Respondent No.2 while driving trailer No. C.G.11-AB-0274 rashly and negligently, collided with the motorcycle which resulted in the death of Omprakash and the pillion rider Melu Ram. Appellants are the dependents of Omprakash, who have filed claim petition against the respondents (the driver, owner and the insurer) claiming award of compensation. The learned tribunal below after affording opportunities to both the parties for presenting their case has passed the impugned award in which it was held that the death of Omprakash resulted due to rash and negligent driving of respondent No.1. The liability of respondents was held, but it was also held that the motorcycle driven by deceased had 3 other pillion riders, hence, the findings of contributory negligence was given and 50% of the compensation assessed was deducted and thereby award of Rs.6,59,120/- was passed in favour of the appellants, hence, this appeal.

3. It has been challenged that the deduction of 50% by way of contributing negligence on the part of the deceased was an erroneous decision of the tribunal below and it is also submitted that the award under the heads of expenses of funeral and loss of consortium etc. have been given on the lower side, hence, prayed that award be enhanced suitably.
4. Grounds in this appeal are these that learned tribunal below has not followed the principles laid down in case of ***Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation and Another***, reported in **(2009) 6 Supreme Court Cases 121** in the matter of deduction from the income of the deceased and in the matter of applying correct multiplier. The assessment of compensation by the learned tribunal below is contrary to the principles of assessment. The income of the deceased as pleaded and proved has been erroneously rejected and reduced by the tribunal below. The deduction from the income towards personal expenses of the deceased has also been made on higher side. No consideration was given towards the future prospects whereas in this respect 50% increase in the income should have been included for the payment of compensation in the head of future prospects. Similarly, the assessment has been made on the lower side for loss of estate, loss of consortium and loss of love and affection. Hence, prayed that the compensation may be suitably enhanced.
5. Learned counsel for respondent No.3 has opposed the grounds in appeal and the submissions made in this respect. It is submitted that the trial Court has awarded just and proper compensation in favour of the appellant, which needs no interference. There had been a clear finding by the learned tribunal below that the deceased was driving the motorcycle along with 3 pillion riders.

6. Both the parties are heard and perused the material on record.
7. Learned tribunal below came to a conclusion that motorcycle had 4 riders and on the basis of this fact that deceased Omprakash and Melu Ram died on the spot and the charge-sheet of the police case mentions that two other persons are injured, who were not examined before the tribunal and neither their police statements were produced before the Court, thereafter, it was assumed that a person driving motorcycle with 2 pillion riders cannot drive safely, carefully and cautiously.
8. Appellant/applicant examined one witness present on the spot namely Arvind Kumar (AW-2) who has stated that deceased Omprakash Kashyap was driving motorcycle with one person was sitting behind him on the motorcycle and he met with the accident. In cross-examination, the counsel for respondent No.3 gave suggestion that 2 other persons were sitting behind deceased Omprakash on the same motorcycle, which was categorically denied. There is no other evidence of the applicants to come to this conclusion that deceased was driven the motorcycle with 3 other pillion riders. The documents of the police case exhibited before the tribunal below also do not make any reference to the number of riders on the motorcycle.
9. After examination of witnesses in support of the claim and denial of the suggestion given by respondent No.3, the burden was shifted on respondent No.3 to prove that the motorcycle driven by deceased Omprakash was driving along with 2 pillion riders, which had been the cause of accident, but no witness was examined by the insurer i.e. respondent No.3. Only because there had been 2 other injured persons in the same accident, without any statement or pleading, it cannot be

assumed that those two injured persons were also riding on the same motorcycle, hence, findings arrived at by the learned tribunal below is totally an erroneous finding which needs to be interfered with.

10. The total annual income of the deceased was assessed at Rs.1,17,960 by the trial Court, which is not challenged. The learned tribunal has made a deduction of 1/3 towards the expenses of the deceased which is challenged by the appellants on the ground that as per the direction in *Sarla Verma (supra)*, the standard deduction should have been $\frac{1}{4}^{\text{th}}$ from the total income of the deceased. In *Sarla Verma (supra)* it is directed that if the number of dependents family members of deceased are 4 to 6 then the deduction for the expenses of the deceased shall not exceed $\frac{1}{4}$ of the total income. Hence, in this case also the deduction had to be $\frac{1}{4}^{\text{th}}$. Accordingly after this deduction, the remaining amount comes to Rs.88,470/- which can be held as loss of annual income of the appellants on account of death of the deceased.

11. As already held that there is no evidence to hold that deceased himself had been responsible for the accident occurred, hence, there can be no deduction on account of contributory negligence. Accordingly, the amount that has been assessed as to be the annual loss of the appellant shall be taken in whole for calculation of the total loss under the heads of loss of income. The age of deceased was between 35 to 40 years, the multiplier applicable in this case would be 16, according to *Sarla Verma (supra)* and by applying the multiplier of 16 to the annual loss of the appellants, the total amount of compensation shall be Rs.14,15,520/- (88470x16).

12. Reliance has been placed upon the judgment of Supreme Court in

Rajesh and Others Vs. Rajbir Singh & Others, reported in (2013) 9 Supreme Court Cases 54 in which it has been held that the minimum amount for funeral purpose shall not be less than Rs.25,000/-and the award under the heads of loss of consortium shall not be less than Rs.1 lac. Following the guidelines laid down by the Supreme Court in this case the funeral expenses in this case is enhanced to Rs.25,000/- and the amount under the head of loss of consortium, loss of love and affection etc is enhanced to Rs.1 lac.

13. On the basis of the findings above, the total amount Rs.15,40,520/- (14,15,520+1,25,000) is the amount which the appellants are entitled to receive as just and proper compensation in this case. Hence, this appeal is allowed. The compensation awarded by the learned tribunal below is enhanced to Rs.15,40,520/-. The amount of award if any paid by the respondent No.3 shall be adjusted in the payment of enhanced award. If the amount of enhanced award or difference amount is not paid to the appellants within a period of 45 days from the date of this order, then an interest at the rate of 9% shall also be payable by the respondent No.3 from the date of passing of this award till the date of realization.

14. Accordingly, the appeal stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE