

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No.913 of 2011

1. Smt. I. Madhavi W/o Late I. Gopal Rao, aged about 41 years.
2. Ku. I. Bhavana D/o Late I. Gopal Rao, aged about 20 years.
3. Ku. I. Sumana D/o Late I. Gopal Rao, aged about 17 years.

Appellant No.3 is minor, through legal guardian mother Smt. I. Madhavi.

All are R/o in front of Sahani Petrol Pump, Kumharpara, Jagdalpur, at present 50-83-18 Mathuranagar, Vishakhapatnam, District Vishakhapatnam (Andhra Pradesh).

---Appellants

**Versus**

1. Anoop Naag S/o Ayub Naag, aged about 23 years, Occupation-Driver, R/o Hotkachora, Jagdalpur, Police Sttion Bodhghat, District Bastar (C.G.) (Driver).
2. Smt. Saroj Sahani W/o T.R.Sahani, R/o Maan Santoshi Ward, Near Baba Ramdeo Mandir, Kumharpara, Jagdalpur, District Bastar (C.G.) (Owner).
3. The New India Insurance Company Limited, through the Branch Manager, Near Jhankar Talkies, Jagdalpur, District Bastar (C.G.).

---Respondents

---

|                                     |   |                                                                             |
|-------------------------------------|---|-----------------------------------------------------------------------------|
| For the appellants                  | : | Ms.Pragya Pandey, Advocate.                                                 |
| For resp.No.3/<br>Insurance Company | : | Shri H.B.Agrawal, Senior Advocate along with<br>Ms.Prabha Sharma, Advocate. |

---

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/01/2018

1. Present is an appeal filed by the claimants under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 29/03/2011 passed by the learned First Additional Motor Accident Claims Tribunal, Jagdalpur in Motor Accident Claim Case No. 37/2010.

2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.24,66,540/- of which 25% was deducted towards contributory negligence and held that, the claimants are entitled for a total compensation of Rs.18,49,905/- with interest @ 6% per annum from the date of application.
3. The counsel for the appellants/claimants submits that, the deceased in the instant case was a Bank Manager who met with an accidental death on 30/07/2009 while he was going on his Motorcycle bearing registration No.CG-17-B-5420 was hit by a car owned by the respondent No.2 and driven by respondent No.1 and as a result of the injuries caused from the said accident, the deceased died.
4. The legal representatives of the deceased i.e. the wife and two minor unmarried daughters filed the claim application under Section 166 of the Motor Vehicles Act.
5. The Tribunal taking into consideration the spot map as also the condition of the Motorcycle drew an assumption that, the accident occurred with some contributory negligence on part of the deceased and assessed the negligence on part of the deceased to the extent of 25%.
6. The counsel for the appellants submits that, this finding of contributory negligence is bad in law and erroneous and the same deserves to be set aside/quashed and the claimants be declared to be entitled for the entire compensation awarded. She further submits that, the income assessed by the Tribunal is also on the lower side in as much as if we take into account

the salary slip of the deceased it would reveal that, the deceased was drawing a gross salary of Rs.37,105/-, but the Tribunal has assessed the monthly income at Rs.34,752/-. She further submits that, the claimants would also be entitled for compensation under the future prospects to the tune of 15% which has not been given. Likewise, the compensation under the conventional head also is on the lower side and thus prayed for suitable enhancement of the award.

7. The counsel for the Insurance Company however opposing the appeal submits that, the Tribunal was rightly justified when it reached to the finding of contributory negligence in as much as the condition of the Motorcycle discussed by the Tribunal speaks for itself and thus the finding of contributory negligence does not warrant any interference. He further submits that, the quantum of compensation awarded is also on the higher side and the same also does not deserve to be interfered as the amount reached is based on the evidences which have come on record.

8. From perusal of exhibit-P/7-the pay certificate it would reveal that, the gross salary of the deceased is Rs.37,105/-. However there was certain deductions made towards the income tax so also under the other heads also. This Court thus finds that the income assessed by the Tribunal at Rs.34,752/- to be justified.

9. Assessing Rs.34,750/- as the monthly income of the deceased, the yearly income would become Rs.4,17,000/-. Considering the recent larger Bench decision of the Hon'ble Supreme Court in the case of **National**

**Insurance Company Limited Vs. Pranay Sethi & Ors. (SLP Civil No. 25590/2014, decided on 31/10/2017)** this Court is of the opinion that, the claimants would also be entitled for 15% of the said amount towards future prospects i.e. Rs.62,550/- which if added to the yearly income, the amount would come to Rs.4,79,550/- of which if 1/3rd is deducted towards personal expenses, the amount would come to Rs.3,19,700/- which if multiplied by applying multiplier of 11, the amount would come to Rs.35,16,700/-. It is ordered accordingly that, the claimants shall be entitled for a compensation of Rs.35,16,700/- towards loss of dependency. In addition, the claimants shall also be entitled for an additional amount of Rs.70,000/- under the conventional head which makes the total compensation payable to the claimants at Rs.35,86,700/-. Thus, the claimants shall be entitled for a total compensation of Rs.35,86,700/- instead of Rs.18,49,905/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

10. So far as the finding of contributory negligence is concerned, this Court is of the opinion that, there is no evidence whatsoever adduced before the Tribunal with which the finding of contributory negligence could have been arrived at. It is not a case where there is an evidence to show that, the deceased was travelling on the wrong side of the road when the accident occurred. It is also not a case where there is an evidence to show that the deceased was driving the vehicle in contravention to any of the provisions mentioned in the Motor Vehicles Act.

11. Therefore, this Court is of the opinion that, unless there is some evidence available with which some element of contributory negligence on part of the deceased is established, the finding of contributory negligence would not be sustainable. Except for the observation made, looking at the Motorcycle and the damage caused to the Motorcycle, there does not appear to be any evidence available on record. The damage to the Motorcycle can be caused on various circumstances.

12. Thus, this Court is of the opinion that, the finding of contributory negligence seem to be more on assumption and presumption rather than there being any cogent evidence in this regard. Therefore, the finding of contributory negligence of 25% assessed by the Tribunal is not sustainable and the same is accordingly set aside. It is ordered that, the claimants shall be entitled for the entire compensation awarded by this Court.

13. The appeal stands allowed and disposed off.

Sd/-  
(P. Sam Koshy)  
JUDGE