

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 377 of 2011

1. Vijit Banerjee S/o B.P.Banerjee, aged about 60 years.
 2. Paumi Banerjee W/o Vijeet Banerjee, aged about 51 years.
 3. Sudeep Banerjee S/o Vijeet Banerjee, aged about 22 years.
- All are R/o Bankimongra, Katghora (C.G.)

---Appellants

Versus

1. S.K.Shrivastava (Shiv Kumar Shrivastava) S/o Late M.L.Shrivastava, aged about 56 years, R/o Qtr.No.O.B.3/5, C.S.E.B.Colony, Korba East.
 2. The Oriental Insurance Company, Through Branch Manger, Office at T.P.Nagar, Korba (C.G.).
 3. S.K.Shrivastava (Sushil Kumar Shrivastava) S/o K.B.Shrivastava, aged about 60 years.
 4. Smt.Jyotsana Shrivastava W/o S.K.Shrivastava (Sushil Kumar Shrivastava), aged about 55 years.
- Both are R/o Qtr.No. O.B.24, C.S.E.B. Korba East, Korba (C.G.).
5. The United Insurance Company Limited, Through – Branch Manager, Office, Opposite Maharishi Vidya Mandir, Korba (C.G.).

---Respondents

For appellants	:	Shri Amiyakant Tiwari, Advocate.
For respondent No.2/Oriental Insurance Co.Ltd.	:	Shri Pallav Mishra on behalf of Shri R. N.Pusty, Advocate.
For respondent No.5/United Insurance Co.Ltd.	:	Ms.Chitra Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31/01/2018

1. Present is an appeal filed by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 12/10/2010 passed by the

learned Additional Motor Accident Claims Tribunal, Katghora, District Korba (C.G.) in Motor Accident Claim Case No. 176/2007.

2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicle Act has awarded a compensation of Rs.1,71,750/- after deducting 50% of the total compensation by virtue of contributory negligence.

3. The counsel for the appellant submits that, the said contributory negligence assessed by the Tribunal is bad and the same deserves to be set aside. Likewise, the claimants also would be entitled for compensation towards future prospects which has not been properly assessed by the Tribunal and thus prayed for the award to be suitably enhanced.

4. Coming to the issue of contributory negligence raised by the counsel for the appellants, this Court does not find it to be a strong ground as admittedly, considering the nature of the accident it reflects that, there was a head on collision between the two vehicles. To add with it, there is also the finding of the Tribunal that, the deceased in the instant case-Suparna Banerjee did not have a license for driving the Motorcycle at the time of accident as such he was driving the vehicle without license.

5. In the given circumstances, the finding of contributory negligence cannot be said to be either erroneous or perverse.

6. So far as the quantum of compensation is concerned, this Court finds the monthly income of the deceased assessed by the Tribunal to be just and reasonable that of Rs.3,000/- per month i.e. Rs.36,000/- yearly. However,

the claimants in the instant case would be entitled for 40% of his income towards future prospects i.e. Rs.14,400/- which if added to the yearly income of the deceased, the amount would come to Rs.50,400/-. Considering the fact that deceased was a bachelor, if $\frac{1}{2}$ is deducted towards personal expenses, the amount comes to Rs.25,200/- which if multiplied by applying multiplier of 18, the amount would become Rs.4,53,600/- of which if 50% is deducted towards contributory negligence, the amount would come to Rs.2,26,800/-. In addition, the claimants would also be entitled for a compensation of Rs.40,000/- under the conventional head to make the total compensation payable at Rs.2,66,800/-. It is ordered accordingly that the claimants would be entitled for a total compensation of Rs.2,66,800/-. The liability of payment of compensation shall remain upon the same persons as has been held by the Tribunal.

7. The appeal of the claimants thus stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit