

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 941 of 2012**

1. Smt. Neelawati Wd/o. Sukhchand Baghel, Aged about 35 years,
2. Shyamuram Baghel, S/o. Late Miri Baghel, Aged about 62 years,
3. Miss Divya Baghel, D/o. Late Sukhchand Baghel, Aged about 6 years,
4. Miss Surbhi Baghel, D/o. Sukhchand Baghel, Aged about 3 years,

Appellants No. 3 & 4 are Minors, through their mother Smt. Neelawati (Appellant No.1)

All are R/o. Village Rajpur, Police Station Bhanpuri, District Bastar Chhattisgarh (Claimants)

----Appellants**Versus**

1. Lokesh @ Dalim Panigrahi, S/o. Late Maniram Panigrahi, Aged about 30 years, R/o. Village Chamiya, Police Station Bhanpuri, District Bastar, Chhattisgarh (Driver)
2. Dharamuram Kashyap, S/o. Madhuram Kashyap, Aged about 42 years, R/o. Village Chamiya, Police Station Bhanpuri, District Bastar, Chhattisgarh (Owner)
3. The Branch Manager, United India Insurance Company Limited, Anupama Talkies Chowk, Jagdalpur, District Bastar, Chhattisgarh

----Respondents

For Appellants	:	Mr. P.K. Tulsyan, Advocate
For Insurance Company	:	Ms. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****07/03/2018**

1. The present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act for enhancement. Challenge is to the award dated 25.08.2011, passed by the 1st Additional Motor Accident Claims Tribunal, Bastar, at Jagdalpur, Chhattisgarh, in Claim Case No. 182/2010.
2. Vide the impugned award, the Tribunal in a death case has awarded a compensation of Rs.2,91,900/- with interest @ 6% per annum from the date of application.

3. The Tribunal while passing the award has also assessed the contributory negligence to the extent of 30% on the part of the deceased for the accident to occur and accordingly the compensation had been reduced by 30%.
4. The contention of the counsel for the appellants assailing the award is that the assessment of contributory negligence is without any basis and no evidence was available on record to establish this fact. He further submits that the spot map Exhibit P/5 produced before the Tribunal would clearly reflect that the accident occurred on the extreme left side of the road and the Tractor is said to have crossed the wrong side of the road when the accident occurred. He further submits that Driver of the Tractor being negligent also stands established from the statement of the eyewitness AW/2 Premvati Marya and thus the Tribunal has erred in assessing the contributory negligence only on the ground of there being a head on collision. He further submits that the income assessed is also on the lower side when compared to the date of accident and that the deceased was a mason by profession and he thus falls within the category of skilled labour and therefore the income of Rs.3000/- assessed was unreasonably low and same deserves for enhancement. Likewise, he further submits that the Claimants were also entitled the income under future prospects to be taken into account while quantifying the compensation. So also the multiplier should had been 16 considering the age of the deceased at 35 and the compensation under conventional head also should had been suitably awarded and thus prayed for the modification of the award.
5. Per contra, the counsel for the Insurance Company opposing the appeal submits that the entire finding of the Tribunal was based on the

evidence which have come on record and that there is no strong case made out calling for interference with the finding including that of contributory negligence as admittedly there was a head on collision and therefore the appeal does not have much strength and same deserves to be rejected.

6. Having heard the contentions put forth on either side and on perusal of record what clearly reflects is the date of accident i.e. 23.07.2010, the vehicle involved in the accident i.e. the Tractor and Trolley owned by the respondent no.2 and driven by the respondent no.1 i.e. the vehicle bearing registration No. CG/17/B/1454 and 1455 involved in the accident. It is also not in dispute that the vehicle was duly insured with the respondent no.3 at the time of accident.
7. Given the aforesaid facts and circumstances all that is left to be considered at this juncture is whether the finding of contributory negligence was proper and whether the amount of compensation is fair, just and reasonable or not.
8. The date of accident is July, 2010, the profession of the deceased was a mason. It is anybody's guess that during the said period, even an unskilled labour was drawing the income of between Rs.4500-6000/- a month @ Rs. 150-200/- per day. This Court therefore even though there is no sufficient evidence to show that he was a mason assesses the monthly income of the deceased at Rs.5000/- instead of Rs.3000/- as assessed by the Tribunal. The Claimants in addition would also be entitled for 40% of the said amount towards future prospects which is Rs.2000/-, which would bring the monthly income to Rs.7000/- and the yearly income at Rs.84,000/- of which considering the fact that there were four Claimants the deduction towards personal expenses would

be $\frac{1}{4}^{\text{th}}$ which would bring the amount of Rs.63,000/-, which if multiplied applying the multiplier of 16, the amount would come to Rs.10,08,000/-. In addition the Claimants shall also be entitled for Rs.70,000/- under conventional head to make the total compensation payable at Rs.10,78,000/-.

9. As regard the finding of contributory negligence, the spot map (Exhibit P/5) is brought on record, which shows that the spot where the accident occurred was on the extreme left side of the road and it was the deceased who was going on left side of the road, where the accident occurred and the offending vehicle-the Tractor had crossed the wrong side of the road and came to the right side and hit the deceased person causing an head on collision, thus the finding of contributory negligence does not seem to be properly based. Moreover, the finding of contributory negligence also does not seem to be proper in the light of the statement of the eyewitness AW/2, who has deposed that it was the Driver of the Tractor, of whose negligence the accident occurred.
10. Under the circumstances, the finding of contributory negligence deserves to be and is accordingly set-aside. Since the finding of contributory negligence is set-aside, the Claimants shall be entitled for the entire compensation of Rs. 10,78,000/- as assessed by this Court.
11. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.
12. The appeal thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge