

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1107 of 2012**

1. Remish Ekka S/o Gabrel @ Ramu Ekka Aged About 42 Years
2. Smt. Gloriya Ekka W/o Remish Ekka Aged About 40 Years
Both R/o Village Pandripani (Siringa), P.S. And Tah. Farsabahar,
Distt. Jashpur C.G.

---- Appellants**Versus**

1. Jora Singh S/o Gurudayal Singh Aged About 45 Years New Bombay Market, Raipur, P.S. Kotwali, Raipur C.G.
2. Ranjit Singh S/o Harbhajan Singh Tatibandh, P.S. Amanaka, Raipur, Distt. Raipur C.G.
3. Branch Manager, The New India Insurance Company Ltd. Divisional Office, Transport Nagar, Korba, P.S. Korba, Distt. Korba C.G.

---- Respondents

For Appellants	:	Shri JK Saxena, Advocate.
For respondent No.3	:	Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****07.02.2018**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimants seeking enhancement of compensation against the award dated 29.09.2012 passed by the Additional Motor Accident Claims Tribunal, Kunkuri (in short, the Tribunal) in Claim Case No.55/2008. Vide the said impugned award, the Tribunal after assessing 50 percent contributory negligence, has awarded a compensation of Rs.1,93,750/- to the claimants along with interest @ 6 percent per annum from the date of application.
2. Counsel for the appellants-claimant submits that the amount of compensation awarded by the Tribunal is unreasonably low inasmuch as the income assessed so also the multiplier has not been

properly applied. The claimants are also entitled for compensation under future prospects. The amount awarded under conventional head is also unreasonably low. Thus, prayed for amount to be suitably enhanced.

3. The counsel for the insurance company, however opposing the appeal submits that there is clear finding of the Tribunal that the deceased in the instant case was driving the vehicle without license and therefore, there is a clear breach of policy conditions and as such the insurance company cannot be held liable to pay any compensation to the claimants. Even otherwise, the findings of the contributory negligence seems to be justified. Therefore, the appeal does not have any merit and the same deserves to be rejected.
4. Considering the submissions put forth on either side and on perusal of records, what is undisputed is the date of accident 04.09.2008 and the resultant death of Satish Ekka, aged around 20 years; the vehicle in which the deceased was travelling was a motorcycle bearing registration No.CG-15-D-5435 and on the date of accident he was hit by Truck bearing registration No.CG-04-G-5659. Admittedly, the claimants in their pleadings and evidence have accepted the fact that the deceased did not have a license. In the given circumstances, the findings of contributory negligence cannot be found fault with and the same is therefore upheld.
5. So far as quantum of compensation is concerned, the date of accident is 04.09.2008. The income assessed by the Tribunal is Rs.3750/- per month. Considering the period of accident, this court is

of the opinion that at the relevant time even an unskilled labour would had been earning more than Rs.150/- a day which would make minimum monthly income at Rs.4500/-. Therefore, this court has no hesitation in assessing the income of the deceased at Rs.4500/- per month. In addition the claimants would also be entitled for 40 percent of the said amount towards future prospects.

6. Accepting Rs.4500/- as monthly income, if 40 percent of it is added towards future prospects, the monthly income would reach to Rs.6300/- i.e. Rs.75,600/-annually of which if 50 percent is deducted towards personal expenses, the amount left would be Rs.37,800/-, which if multiplied by applying the multiplier of 18 instead of 15, the amount would become Rs.6,80,400/-. Since there is a finding of contributory negligence of 50 percent against the deceased, the claimants as such would be entitled for 50 percent of the said amount i.e. Rs. 3,40,200/- towards loss of dependency. In addition, the claimants shall also be entitled for an additional lump sum amount of Rs.40,000/-under the conventional head to make the total compensation payable at Rs.3,80,200/- instead of Rs.1,93,750/- as awarded by the Tribunal.
7. The above enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.
8. Accordingly, the appeal of the appellant-claimants stands allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge