NAFR

# HIGH COURT OF CHHATTISGARH AT BILASPUR

## MAC No. 774 of 2012

1. Ranju @ Anju Mandal W/o late Sushant Mandal, aged about 40 years, Occupation House Wife.
2. Sanjay S/o Late Sushant Mandal, aged about 22 years, Occupation – Agriculturist and labour.

   Both are R/o Sanjay Nagar (Mahavirpur), P.S. Jaynagar, Tahsil – Surajpur, Post – Ajabnagar, District Surajpur (C.G.) (Claimants).

---Appellants

Versus

1. Shriram Yadav S/o Late Lalji Yadav, aged about 40 years, R/o Quarter No.1196, A.T.I. Colony, Vishrampur, Tahsil Surajpur, District Surajpur (C.G.).
2. Sub Area Manager, S.E.C.L. Jaynagar Area Vishrampur, District Surajpur (C.G.).
3. The Oriental Insurance Company Limited, Through – Branch Manager, The Oriental Insurance Company Limited, Near Ambedkar Chowk, Ambikapur, District Surguja (C.G.).

---Respondents

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| For appellants/claimants : | Shri Sunil Tripathi, Advocate. |
| For respondent No.3/Insurance: Company. | Ms.Chitra Shrivastava, Advocate. |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

27/02/2018

1. Present is an appeal filed by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 05/07/2012 passed by the learned First Additional Motor Accident Claims Tribunal, Surajpur (C.G.) in Motor Accident Claim Case No. 111/2011.

2. Vide the impugned award, the Tribunal after assessing the compensation at Rs.3,50,000/- deducted 25% after assessing

contributory negligence and ordered for payment of compensation to the claimants at Rs.2,75,000/- with interest @ 9% per annum from the date of application.

3. The counsel for the appellants/claimants submits that, the finding of contributory negligence is erroneous and without any sufficient material on record and that there was no evidence led by the Insurance Company to establish their contention. He further submits that, the income assessed by the Tribunal also is unreasonably low taking into consideration the period of accident and the nature of profession which the deceased was performing on the date of accident. According to him, the deceased was a Mason by profession and he was drawing wages of more than Rs.200/- per day i.e. Rs.6,000/- per month and therefore the Tribunal ought to have calculated the compensation accordingly. He further submits that, the claimant would also be entitled for a compensation under future prospects and thus prayed for suitable enhancement of the award and also for setting aside of the finding of contributory negligence.

4. On the contrary, the counsel for the Insurance Company opposing the appeal submits that, the award does not warrant any interference as it is based on the evidence which was available on record and that since there was no proof of the deceased having a license to drive the Motorcycle. That the claimants having not produced the same and in addition the accident having occurred by way of head on collision, the finding of contributory negligence is justified. She further submits that,

the assessment of compensation on the notional income also does not seem to be in any manner either erroneous or on the lower side and thus prayed for rejection of the appeal.

5. Having heard the contentions put forth on either side and on perusal of record what is undisputed is the date of accident to be 19/04/2010, the Truck involved in the accident bearing registration No. CG-15-ZC-0972 owned by the respondent No.2, driven by the respondent No.1 and was duly insured by the respondent No.3/Insurance Company. What is also admitted from the facts is that as a result of the accident, the deceased – Sushant Mandal, aged about 48 years has suffered grievous injuries to which he later succumbed.

6. Given the aforesaid factual matrix of the case, the only issue left to decide is whether the compensation awarded is just and reasonable or not? If we take into consideration the period of accident i.e. April-2010, this Court has no hesitation in reaching to the conclusion that, during the relevant period, the minimum income of even an unskilled labour would had been somewhere between Rs.150-200/- per day i.e. Rs.4,500-6,000/- per month. Though the claimants have not produced any evidence to show that he was a Mason, even if the deceased was considered as an unskilled labour, even then he would have received an income between Rs.4,500-6,000/- per month.

7. Thus, this Court assesses the monthly income of the deceased at Rs.4,500/- instead of Rs.3,000/- as assessed by the Tribunal. Further,

the claimants in view of the recent judgments of the Hon'ble Supreme Court would also be entitled for compensation under the future prospects which would be 25% as the age of the deceased was more than 40 years.

8. Accepting Rs.4,500/- as the monthly income of the deceased, the yearly income would be Rs.54,000/-. Further the claimants would be entitled for 25% of the same towards future prospects i.e. Rs.13,500/- which if added to the yearly income of the deceased, the figure would become Rs.67,500/- of which if 1/3rd is deducted towards personal expenses, the amount left would be Rs.45,000/- which if multiplied by applying multiplier of 13, the amount would become Rs.5,85,000/-. It is ordered accordingly that the claimants shall be entitled for Rs.5,85,000/- towards loss of dependency. In addition, the claimant shall also be entitled for a lump sum compensation of Rs.70,000/- towards the conventional head to make the total compensation payable to the claimants at Rs.6,55,000/- instead of Rs.3,50,000/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

9. At this juncture it would be relevant to consider whether the finding of contributory negligence by the Tribunal is justified or not? The only material taken note of by the Tribunal for assessing contributory negligence is the fact that, the claimants were not able to produce the license of the deceased before the Tribunal.

10. In the opinion of this Court, this by itself would not be sufficient to hold that, the deceased was not having a license. The possibility of license which was in possession of the deceased having being lost in the accident cannot be ruled out.

11. Further what is also relevant to take note of is that, the Insurance Company in the instant case has not led any evidence to substantiate any of their contention.

12. Under the circumstances, the finding of contributory negligence is not sustainable and the same deserves to be and is accordingly set aside.

13. Since the finding of contributory negligence is set aside, the claimants would be entitled for the entire compensation as quantified herein above.

14. The appeal stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit