

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 540 of 2012**

1. Smt. Archana Devi Sahu W/o late Rakesh Kumar Sahu, aged about 27 years.
2. Harsh Kumar Sahu S/o Late Rakesh Kumar Sahu, aged about 7 years.
3. Jitendra Kumar Sahu S/o Late Rakesh Kumar Sahu, aged about 3 years.

Appellants No.2&3 are minor through Smt. Archana Devi Sahu, appellant No.1.

All R/o Village Sel, At Present Village Kaira, Tahsil Nawagarh, District Janjgir-Champa C.G.

---- Appellants**Versus**

1. The Oriental Insurance Co. Ltd. through Jonal Manager, Office First Floor, Rama Trade Center, Opposite Rajeev Plaza, Bus Stand, Bilaspur (CG).
2. Pawan Sahu S/o Bharosa Sahu, R/o Bazar, Village Gobra, P.S. Bhilai-Garh District Raipur C.G. At present New Water Tank Kududand, Bilaspur (CG).
3. Sitaram Sahu S/o Soni Ram Sahu, R/o Tengna Kachchhar, P.S. Bhila-Garh District Raipur C.G.
4. Smt. Sumitra Bai Sahu W/o Gelan Prasad Sahu, R/o Village Sel P.S. Kasdol, District Raipur C.G.
5. Gelan Prasad Sahu S/o Jagnnanth Prasad Sahu, R/o Village Sel, P.S. Kasdol, District Raipur C.G.

---- Respondents

For Appellants	:	Shri RK Jain, Advocate.
For respondent No.1	:	Smt. Chitra Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****28.02.2018**

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 14.02.2012 passed by the 1st Additional Motor Accident Claims Tribunal, Bilaspur (in short, the Tribunal) in Claim Case No.225/2010. Vide the said impugned award, the

Tribunal in a death case has awarded a compensation of Rs.2,07,000/- after assessing 50 percent of contributory negligence against the deceased.

2. The brief facts of the case is that Rakesh Kumar Sahu, aged between 28-30 years, on 02.07.2010 when travelling in his motorcycle was hit by a Truck coming from behind. As a result of the said accident, Rakesh Kumar sustained grievous injuries to which he later succumbed. The legal representatives of deceased filed a claim application which stood decided vide impugned award.
3. Counsel for the appellant-claimants submits that the finding of contributory negligence is bad in law. It is a case where the deceased was moving on the left side of the road when he was hit by the Truck from the back side and the finding of contributory negligence does not have any basis. Further, there was no evidence adduced by the insurance company to prove the contributory negligence nor was there any eyewitness examined to establish the contributory negligence or at least to show that the deceased was negligent while driving the vehicle which resulted in the accident.
4. The only piece of evidence which is said to have been taken by the Tribunal is of the postmortem report where trace of Alcohol was found from the body of deceased and secondly that the claimants could not produce the driving license of the deceased. Merely because there were traces of Alcohol by itself would not lead to assess contributory negligence unless there is evidence that the deceased was driving the vehicle in such an inebriated condition.

Further, it was also to be established from the postmortem that the limit of Alcohol was much more than the prescribed limit as is specified under Section 185 of the Motor Vehicles Act. Similarly, since the deceased had died in the accident, the possibility of deceased losing his driving license in the course of accident also cannot be ruled out. Merely because the claimants could not produce the license by itself cannot be a ground of contributory negligence. Thus, the said finding of contributory negligence is set aside.

5. Coming to the question of compensation, if we consider the income assessed by the Tribunal, this court has no hesitation in holding it to be unreasonably low. Indisputably the date of accident being July, 2010, the minimum income of an unskilled labour would had been Rs.200/-a day i.e. 6000/- per month. The deceased in the instant case is said to have been working as Mason which is skilled nature of work. This court therefore, assesses the income of the deceased at Rs.6000/- instead of Rs.3000/- as assessed by the Tribunal and proceeds to quantify the compensation. Further, the claimants would also be entitled for 40 percent of said amount towards future prospects.
6. Accepting Rs.6000/- as the monthly income, if 40 percent of it is added, the monthly income comes to Rs. 8400/- i.e. 1,08,000/- yearly, of which if 1/3rd is deducted towards personal expenses, the amount left would be Rs.67,200/- which if multiplied by applying the multiplier of 17, the amount towards loss of dependency would come to Rs.11,42,400/-. In addition, The claimants are also entitled for a

lump sum compensation of Rs.70,000/- towards conventional heads to make the total compensation payable at Rs.12,12,400/-. Thus, it is ordered that the claimants shall now be entitled for a total compensation of Rs.12,12,400/- instead of Rs.2,07,000/- as awarded by the Tribunal.

7. Since the finding of contributory negligence has already been set aside by this court, the claimants are entitled for entire amount of compensation as assessed by this court.
8. The above enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.
9. Accordingly, the appeal of the appellant-claimants stands allowed and disposed of.

Sd/-

(P.Sam Koshy)
Judge