

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 698 of 2012**

1. Smt. Chhunni B S/o Late Mahboob Khan, aged about 40 years.
2. Irfan Khan S/o Late Mahboob Khan, aged about 14 years through natural guardian appellant No.1-Smt. Chhunni B.
Both R/o Rajeev Gandhi Ward, Jagdalpur, Dist. Bastar C.G.

---- Appellants**Versus**

1. Saleem Khan S/o Babu Khan, aged about 33 years, through Jiyalal Gupta S/o Shitla Prasad Gupta, Nakapara, Main Road, Tongpal Distt. Bastar (CG).
3. Jiyalal Gupta S/o Shitla Prasad Gupta Nakapara Main Road Tongpal Dist. Bastar C.G.
2. The Branch Manager, The New India Insurance Co. Ltd., Near Jhankar Talkies, Jagdalpur, Dist. Bastar C.G.

---- Respondents**MAC No. 699 of 2012**

1. Smt. Babita Wd/o late Devsharan Bharti, aged about 24 years.
2. Krishna Bharti, S/o late Devsharan Bharti, aged about 1 year and 6 months through natural guardian appellant No.1.
3. Smt. Bhagwati Devi Wd/o Lallan Prasad Bharti, aged about 50 years,
4. Smt. Geeta Devi W/o Shiv Kumar, aged about 25 years.
All are R/o Jawahar Nagar, Matguda, Jagdalpur, Distt. Bastar (CG).

---- Appellants**Versus**

1. Saleem Khan S/o Babu Khan, aged about 33 years, through Jiyalal Gupta S/o Shitla Prasad Gupta, Nakapara, Main Road, Tongpal Distt. Bastar (CG).
3. Jiyalal Gupta S/o Shitla Prasad Gupta Nakapara Main Road Tongpal Dist. Bastar C.G.
2. The Branch Manager, The New India Insurance Co. Ltd., Near Jhankar Talkies, Jagdalpur, Dist. Bastar C.G.

---- Respondents

For Appellants	:	Shri PK Tulsyan, Advocate.
For respondent No.3	:	Shri Anand Gupta and Shri Deepak Gupta, Advocates.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****23.02.2018.**

1. These are two appeals arising out of common award dated

17.04.2012 passed by the 1st Additional Motor Accident Claims Tribunal, Jagdalpur (in short, the Tribunal) in Claim Case Nos. 01/2010 and 02/2010.

2. The facts of the case is that, two deceased persons namely Mahboob Khan and Devsharan Bharti were travelling on a Scooty on 10.12.2009 when they were hit by a Truck bearing registration No.CG-17-D-8476. As a result of the said accident, both these persons succumbed to the injuries. The legal representatives of deceased Mahboob filed a claim application No.01/2010 and the legal representatives of deceased Devsharan Bharti filed a claim application No.02/2010 which stood decided vide the impugned award and the Tribunal in claim case No.01/2010 has awarded compensation of Rs.13,03,560/- and in claim case No.02/2010 awarded compensation of Rs.11,63,467/-.
3. In Claim case No.02/2010 (MAC No.699 of 2012) the Tribunal has assessed contributory negligence on the part of the deceased Devsharan Bharti who was driving the Scooty to the extent of 30 percent while quantifying the compensation.
4. So far as appeal filed by the legal representatives of deceased Mahboob Khan (MAC No.698 of 2012) is concerned, the contention of the appellants is that, the income of the deceased has not been properly assessed. There were deductions made towards GIS and also for personal loans which the deceased had taken from the department, all amounting to Rs.1375/-. This amount would also be part of the income of the deceased as otherwise the deceased would

had been receiving the same if he would not have opted for the GIS scheme or had not taken loan from the department. Thus, this deduction also ought to have been considered as part of the income of the deceased. He further submits that the compensation under the conventional heads also is on the lower side and the same deserves to be suitably enhanced.

5. The counsel for the respondent however opposes the appeal on the ground that the award has been passed considering the age, wage after deductions and as such the award does not warrant any interference. Thus, prayed for rejection of the appeal.
6. Having heard the contentions put forth on either side and on perusal of records, this court has no hesitation in reaching to the conclusion that the amount of Rs.1375/- which stands deducted under GIS as also under loan taken from the department, for all practical purposes has to be considered as part of his income and thus adding the same in the income assessed by the Tribunal of Rs.8850/-, the total monthly income comes to Rs.10,225/-. The claimants would also be entitled for 30 percent of the said amount towards future prospects as the deceased was a government servant. 30 percent of Rs.10,225/- comes to Rs.3667/-. Thus, total monthly income reaches to Rs.13,292/- and Rs.1,59,504/- yearly of which if 1/3rd is deducted towards personal expenses, the figure comes to Rs.1,06,336/-. The said amount if multiplied by applying the multiplier of 14, the amount reaches to Rs.14,88,704/- towards loss of dependency. It is ordered accordingly. In addition, the claimants shall also be entitled for an

additional lump sum compensation of Rs.70,000/- towards conventional heads to make total compensation payable at Rs.15,58,704/-.

7. It is ordered accordingly that the claimants in MAC No.698 of 2012 shall be entitled for a total compensation of Rs.15,58,704/- instead of Rs.13,03,560/- as awarded by the Tribunal.
8. So far as MAC No.699 of 2012 is concerned, the contention of the appellants is that, there is a finding of contributory negligence against the deceased Devsharan Bharti to the extent of 30 percent which is totally unjustified and uncalled for and is without any basis. He submits that eyewitness to the incident himself was examined who has deposed that the accident occurred when the deceased was hit from a Truck coming from back side. This statement of eyewitness has been discarded by the Tribunal without any sufficient basis. He further submits that in addition to the eyewitness, there is also evidence of the driver himself who has clearly admitted the fact that the Truck as well as Scooty were going on same direction and because of the negligence of the driver of the Scooty, the accident occurred. This evidence shows that it was not a case that Truck was coming from the opposite direction hitting the deceased.
9. He further submits that in the cross examination, the counsel for the insurance company had proposed a suggestion to the eyewitness that the accident occurred when the deceased persons were entering into the main road. According to Shri Tulsyan, all these statements would admittedly prove that it was a case where the deceased

persons and Truck were travelling towards the same direction and it was a case where the accident occurred when the Truck hit the Scooty in which the deceased persons were travelling.

10. He further referred to the evidence of driver who has deposed before the Tribunal that had the conduct of the Truck driver been more vigilant or cautious or alert, the accident could have been avoided. This also has not been taken note of by the Tribunal.
11. Per contra, learned counsel for the respondent-insurance company in both the appeals opposing the contention of the appellants submits that the finding of contributory negligence is purely justified as it has been established that the deceased persons were not travelling on the road when they were hit by the Truck, but they suddenly entered the road without being noticed by the driver of the offending vehicle and thus, the driver of the Truck cannot be held responsible for the accident. Rather, it is the deceased persons themselves who were responsible for the accident or at least had contributed in the accident and therefore, the findings of contributory negligence does not warrant any interference.
12. Before dealing with the merits of the case, it is pertinent to take note that the insurance company in the instant case has not led any evidence in respect of these contentions or to disprove the contention put forth by the claimants both so far as contributory negligence and quantum.
13. Having heard the contentions on either side and on perusal of records, if we take into consideration the entire evidence which have

come on record, particularly the statement of eyewitness examined Shyam, AW-3, the driver of the offending vehicle Saleem Khan, NAW-1, it clearly reflects that the deceased persons were travelling on the scooty and that they were trying to enter into the road coming from Hanuman Temple side when they were hit by the Truck. The Truck admittedly was on the main road straight and it is a deceased person who had entered the main road from the pocket road. Thus, even though the Scooty as well as Truck were driven on the same direction and even though the findings of head on collision may not be sustainable, but it cannot be lost sight of the fact that it was the deceased persons who were entering the main road and the offending Truck was going straight. So, there appears to be some element of contributory negligence on the part of the deceased Devsharan Bharti which may not be to the extent of 30 percent as assessed by the Tribunal which was on the basis of presumption of there being head on collision.

14. Under the given circumstances, particularly taking note of the suggestions which were put by the counsel for the insurance company coupled with the statement of eyewitness examined and also taking note of the statement of the driver of offending Truck, this court assesses contributory negligence against the deceased Devsharan Bharti who was driving the Scooty at 10 percent instead of 30 percent as assessed by the Tribunal and proceeds to decide the case accordingly.
15. So far as quantum part is concerned, this court does not find any

strong case made out by the claimants for interfering with the monthly income assessed by the Tribunal or quantification of the loss of dependency part is concerned. However, in the light of recent larger Bench decision of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the claimants would be entitled for a lump sum compensation of Rs.70,000/- under the conventional heads. The loss of dependency of the deceased assessed was Rs.16,47,096/- of which the claimants would be entitled for only 90 percent, as this court has already held that the deceased Devsharan Bharti had contributed negligence of 10 percent. After deducting 10 percent, the loss of dependency comes to Rs.14,82,386/-, to which the claimants are also entitled for Rs.70,000/- as compensation under conventional heads to make the total compensation payable at Rs.15,52,386/- instead of Rs.11,63,46/- as assessed by the Tribunal.

16. It is ordered accordingly that the claimants in MAC No.699 of 2012 shall be entitled for a total compensation at Rs.15,52,386/-.
17. As a result, both the appeals stand allowed and disposed of. The enhanced amount of compensation in both the appeals shall also carry interest at the same rate as has been awarded by the Tribunal.

Sd/-

(P.Sam Koshy)
Judge