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**HIGH COURT OF CHHATTISGARH AT BILASPUR****MAC No. 52 of 2018**

Manager Choramandlam Company Ltd. Chouhan Estate Second Floor Supela Bhilai Through Deputy Manager (Legal), Choramandlam MS General Insurance Company, Opposite Life Insurance Corporation Pandri, P. S. Pandri District Raipur, Chhattisgarh

**---- Appellant****Versus**

1. Krishnavati Devi W/o Late Devmuni Aged About 42 Years
  2. Ku. Sanju Yadav D/o Late Muni Yadav Aged About 18 Years
  3. Ku. Anju Yadav D/o Late Muni Yadav Aged About 15 Years
  4. Vijay Kumar Yadav S/o Late Muni Yadav Aged About 12 Years
  5. Smt. Savita Devi W/o Late Ram Badai Yadav Aged About 65 Years
- Respondent No. 3 & 4 are Minor Through Mother Smt. Krishna Devi W/o Late Devmuni.
- All are R/o Rajivnagar World No. 04 Supela Bhilai, Tehsil And District Durg, Chhattisgarh.
6. Samrath Yadav S/o Vaidar Yadav R/o Dornapal, District Dantewara, Chhattisgarh (Driver)
  7. Rajneesh Singh Rathor S/o Ramraj Singh R/o Main Road Kukanar, District Jagdalpur, Bastar, Chhattisgarh (Owner)
  8. Harpreet Singh Bhatia S/o Late S.S. Bhatia R/o Old Bus Stand Bhilai, District Durg, Chhattisgarh (Owner)
  9. Divisional Manager, National Insurance Company, Akash Ganga Complex Supela Bhilai Tehsil And District Durg, Chhattisgarh

**----Respondents**


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| For Appellant | : | Mr. Ghanshyam Patel, Advocate under instructions of Mr. Abhishk Sinha, Advocate |
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**Hon'ble Shri Justice P. Sam Koshy****Order on Board****23/01/2018**

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 15.09.2017, passed by the 1<sup>st</sup> Additional Motor Accident Claims Tribunal, Durg, Chhattisgarh, in Claim Case No. 2496/2012, whereby the Tribunal in a death case under Section 166 of the Motor Vehicles Act has

awarded a compensation of Rs.9,20,000/- with interest @ 6% per annum.

2. The counsel for the appellant submits that the Tribunal below has failed to appreciate the fact that there was a great element of contributory negligence on the part of the deceased in the accident. Therefore after assessing contributory negligence, the Tribunal should have apportioned the payment of compensation accordingly. It was further the contention of Mr. Ghanshyam Patel, Advocate that the evidence which have come on record shows that the accident occurred when the deceased who was driving the Tanker bearing registration No. CG/07/C/5385 at the time of crossing of the road was hit by the Truck bearing registration No. CG/17/GA/1753. Thus the deceased who was driving the Tanker, while crossing the road met with an accident and therefore the factum of contributory negligence is apparent and fully proved or established. It was the solitary ground raised by the appellant while challenging the impugned award.
3. Perusal of the record would show that there is an evidence of one Mahendra Singh examined on behalf of the Claimants and said Mahendra Singh was an eyewitness to the accident. That the said eyewitness in his deposition has categorically stated that the Driver of the Truck coming from the opposite direction was at a great speed and it was on account of his negligence that the accident occurred.
4. Given the said facts and circumstances of the case, this Court is of the opinion that the ground raised by the Insurance Company does not have much force calling for an interference with the impugned award. Even otherwise contributory negligence cannot be presumed

or assumed unless there is cogent evidence led by the parties to establish the said.

5. In addition, the ground of challenge, which has been raised by the Insurance Company is that the quantum of compensation awarded is on higher side particularly that under the conventional head and future prospects is concerned.
6. Considering the period of during which the award was passed and also taking note the total number of Claimants and the conditions of the Claimants, this Court is of the opinion that the said ground raised by the appellant does not have sufficient force calling for an interference and the same deserves to be and is accordingly rejected.
7. As a result, the appeal fails and stands rejected.

Sd/-  
**(P. Sam Koshy)**  
**Judge**

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