

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 923 of 2012**

1. Smt.Lakhni Bai Jangade, W/o Late Kanshi Ram Jangade Aged About 40 Years,
2. Amit Kumar Jangade S/o Late Kanshi Ram Jangade Aged About 23 Years
3. Ku. Rakeshwari Jangade D/o Late Kanshi Ram Jangade Aged About 18 Years

All R/o Village Khandawa, P.S. Abhanpur, Tahsil Abhanpur, Dist. Raipur C.G.

---- Appellants

Versus

1. Rupendra Todar, S/o Dhansai Todar Aged About 19 Years R/o Post- Kathiya No.-2, P.S. Gobra-Nawapara, Dist. Raipur C.G. , Chhattisgarh (wrongly mentioned as Dhamtari whereas the Gobra-Nawapara come under the District of Raipur).
2. Rajendra Sonwani S/o Asha Ram Sonwani, R/o Village Gaurbhatti, Post And P.S. Arang, Tahsil And District Raipur C.G.
3. The I.C.I.C.I.-Lombard General Insurance Co. Ltd., through Branch Manager, Branch Office Ground Floor, Vanjiya Bhawan, Near H.D.F.C. Bank, Jail Road, Devendra Nagar, Dist. Raipur C.G.
4. Smt. Amleshwari Jangade, D/o Late Kanshi Ram Jangade and W/o Bhupendra, R/o Kathiya No.-2, P.S. And Post And Tahsil Gobra-Nawapara, Dist. Raipur C.G.

---- Respondents

For Appellants	Shri R.K. Pali, Advocate on behalf of Shri Shivendu Pandya, Advocate.
For Respondent No.3	Shri Sourabh Sharma, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****27/09/2018**

1. This is claimants' appeal seeking enhancement of compensation awarded by the 2nd Additional Motor Accident Claims Tribunal (for short 'the Tribunal') in claim case No.09/2010 vide award dated 12.05.2011.
2. Facts of the case leading to the filing of claim petition are that on the fateful day i.e. 19.10.2009, at about 4:00 pm in the evening deceased Kanshi Ram Jangade, aged about 45 years, was going from Kathiya to village Thanaud by his own Motorcycle bearing No. CG/04/DF/1723 and when they reached near the old liquor shop in village Kathiya, then the driver of the offending vehicle driving the said vehicle in a rash and negligent manner dashed the vehicle of the deceased from front side. As a result thereof, the deceased received severe injuries and died on the spot.
3. As against compensation of Rs. 36,53,000/- claimed by unfortunate widow and children of deceased Kanshi Ram Jangade, aged about 45 years, by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 19.10.2009, the Tribunal awarded a total sum of Rs. 1,87,500/- as compensation along with interest @ 6 per cent per annum from the date of application till its actual payment.
4. The Tribunal, on a close scrutiny of the evidence led, held :
the accident had occurred due to involvement of

motorcycle bearing No. CG-04-DF-1723, and TVS Motorcycle bearing No. CG-04-CP-4042 being driven by Kashi Ram Jangade i.e. husband of appellant No. 1 and father of appellants No. 2 & 3; Motorcycle driver and TVS motorcycle driver both have contributed to the cause of accident in the ratio of 50:50 percent; insurer of motorcycle is liable for payment of compensation to the claimant as they could not establish violation of policy conditions; awarded Rs. 3,75,000/- to the appellants/claimants; deducted 50% of it on account of contributory negligence of motorcycle driver Kashi Ram Jangade, and thus awarded Rs. 1,87,500/- along with interest @ 6% per annum as compensation to the appellants/claimants.

5. Counsel for the appellants/claimants submits that the Tribunal has wrongly assessed the income of the deceased at Rs.3000/- monthly, whereas the deceased was earning Rs.300/- per day. He further submits that the Tribunal has erred in deducting 50 percent of award amount towards contributory negligence of Kashi Ram Jangade because no negligence on the part of the deceased was proved in this case by leading cogent and reliable evidence. He further submits that learned Claims Tribunal has not given any amount for future prospects and only given Rs.5000/- towards loss of consortium, Rs.8000/- towards loss of estate and Rs. 2,000/- towards funeral expenses. Thus, Tribunal

awarded an amount of Rs.15,000/- only under the conventional heads, which is shockingly on lower side in view of decision rendered by Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, in which the Supreme Court has awarded Rs.70,000/- under conventional heads.

6. On the other hand, learned counsel for the respondents submits that the amount awarded by the Claims Tribunal for the death of deceased Kanshi Ram Jangade is just and proper, which does not call for any interference in the instant claim petition.
7. I have heard learned counsel appearing for the parties and perused the impugned award including the record of Claims Tribunal.
8. As regards the income of the deceased, wife of the deceased namely Lakhni Bai CW-1 in her deposition has stated that the deceased had cycle store from which he was earning Rs. 300/- per month and this apart he was also doing the job of video shooting, whereby he was earning Rs. 1,000/- per month. She has further stated that her husband was also earning Rs. 1,00,000/- from agriculture. However, no document in support of the aforesaid averments has been produced by this witness. Therefore, considering the facts and circumstances of the case, the

nature of job of the deceased and the minimum wages at the relevant time, notional income at the rate of Rs. 4,500/- can safely be taken as monthly income of the deceased i.e. Rs.54,000/- per annum.

9. In view of the law laid down in *Pranay Sethi (supra)*, considering the age of the deceased 30% of his annual income is required to be added thereto towards future prospects which comes to Rs.16,200/-. Thus, the annual income of the deceased is calculated at Rs.70,200/-. Since the deceased is survived by his wife and two children after deducting 1/3 from the above amount towards his personal and living expenses i.e. Rs.23,400/-, the annual loss of dependency comes to Rs.46,800/-. Further, considering the age of the deceased i.e. 45 years, the applicable multiplier is 14. After applying this multiplier, the total loss of dependency comes to Rs.6,55,200/-.
10. In the facts and circumstances of the case, as there was Head-on collision between two motorcycles, the Tribunal has rightly held the deceased guilty of contributory negligence and rightly deducted 50 percent of award amount towards his contributory negligence, as such I do not find any illegality in the award impugned to this extent. Therefore, after deducting 50 percent from the aforesaid amount of Rs.6,55,200/-, the claimants are held entitled for

3,27,600/-. The Tribunal awarded an amount of Rs.15,000/- only under the conventional heads, which is shockingly on lower side and in view of the judgment rendered by the Supreme Court in the Pranay Sethi deserves to be enhanced to Rs.70,000/-.

11. Thus, the claimants are held entitled for a total compensation of Rs.3,97,600/-. Since, the Tribunal has already awarded a sum of Rs.1,87,500/-, after deducting the same from the amount as calculated above, the claimants are held for an additional compensation of Rs.2,10,100/-. This additional amount shall carry interest at the rate of 6% per annum from the date of claim application till its realization.

12. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated hereinabove. Rest of the conditions of the award shall remain intact.

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
JUDGE

Akhilesh