

HIGH COURT OF CHHATTISGARH AT BILASPUR
MAC No. 445 of 2011

1. Smt.Jyotsana Shrivastava W/o S.K.Shrivastava (Sushil Kumar Shrivastava), aged about 55 years.
2. S.K.Shrivastava (Sushil Kumar Shrivastava) S/o K.B.Shrivastava, aged about 60 years.

Both are R/o Qtr.No. O.B.24, C.S.E.B. Korba East, Korba (C.G.).

---Appellants

Versus

1. Surendra S/o Panchulal Chouhan, aged about 22 years, R/o Dabhra, Jaijaipur, at present R/o Balko Jhopadi, Korba (C.G.) (Driver of the vehicle No. M.P.57/B-3084).
2. Lachchan S/o Sundar Lal, aged about 50 years, R/o Qtr.No.43/5, Balgi Colony, Korba. (Owner of the vehicle No. M.P.57/B-3084).
3. The United Insurance Company Limited, Through – Branch Office, Main Road, Korba (C.G.) (Insurer of the vehicle No. M.P.57/B-3084).
4. Neetish Kumar Shrivastava S/o S.K.Shrivastava, aged about 27 years, R/o Qtr.No.O.B.24, C.S.E.B.Korba, East Korba (C.G.).
5. S.K.Shrivastava (Shiv Kumar Shrivastava) S/o Late M.L.Shrivastava, aged about 56 years, R/o Qtr.No. Old B.5, C.S.E.B.Colony, Korba East.
6. The Oriental Insurance Company, Through Branch Manger, Office old Bus Stand Korba (C.G.).

---Respondents

For appellants/claimants	:	Shri Dashrath Kushwaha on behalf of Shri Pushpendra Kumar Patel, Advocate.
For respondent No.3/United Insurance Co.Ltd.	:	Ms.Chitra Shrivastava, Advocate.
For respondent No.6/Oriental Insurance Co.Ltd.	:	Shri Pallav Mishra on behalf of Shri R. N.Pusty, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31/01/2018

1. Present is an appeal filed by the claimants under Section 173 of the Motor Vehicles Act assailing the award dated 12/10/2010 passed by the

learned Additional Motor Accident Claims Tribunal, Katghora, District Korba (C.G.) in Motor Accident Claim Case No. 373/2007.

2. Vide the said impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.1,69,250/- after deducting 50% of the present award on account of contributory negligence assessed against the deceased-Abhishek Shrivastava.

3. The counsel for the appellants/claimants submits that, it is a case where the claimants would have been entitled for much more compensation than what has been awarded by the Tribunal. He further submits that, the claimants were entitled for income under the future prospect so also the compensation under the conventional head also deserves suitable enhancement. He further submits that, the finding of contributory negligence also is not proper and the same deserves to be set aside and the claimants be ordered to be entitled for the entire compensation.

4. The counsel for the respondent however opposing the appeal submits that, the award passed is just and reasonable and does not warrant any interference and thus prayed for rejection of the appeal.

5. Having heard the contention put forth on either side and on perusal of record, what is admitted is the date of accident to be 05/11/2000, the resultant death of the deceased-Abhishek Shrivastava, aged about 17 years. It is also not in dispute that, the deceased was driving the Motorcycle bearing registration No.MP-26-GA-5627 and was travelling along with

Neetish Kumar Shrivastava when the accident occurred. The two vehicles involved in the accident were insured with the Oriental Insurance Company Limited as also with the United India Insurance Company Limited. Since, the deceased-Abhishek Shrivastava did not have a license to drive the Motorcycle, the Insurance Company was absolved of its liability.

6. So far as the contributory negligence is concerned, this Court does not find any strong case made out by the counsel for the appellant calling for an interference with the said finding as apparently, it was a head on collision between the Motorcycle driven by the deceased and the two wheeler bearing registration No. MP-57-B-3084 coming from opposite direction driven by Suparn Banerjee.

7. In view of the head on collision between the two vehicles, the finding of contributory negligence by the Court below does not warrant any interference and the same is accordingly affirmed.

8. So far as the quantum of compensation is concerned, this Court finds the monthly income of the deceased assessed by the Tribunal to be just and reasonable that of Rs.3,000/- per month i.e. Rs.36,000/- yearly. However, the claimants in the instant case would be entitled for 40% of his income towards future prospects i.e. Rs.14,400/- which if added to the yearly income of the deceased, the amount would come to Rs.50,400/-. Considering the fact that, the deceased was a bachelor, the deduction towards personal expenses would be 50% which would bring the amount to Rs.25,200/- which if multiplied by applying multiplier of 18, the amount would come to

Rs.4,53,600/-. In addition, the claimants shall also be entitled for a lump sum compensation of Rs.70,000/- under the conventional head which would bring the total compensation payable to the claimants at Rs.5,23,600/- of which the claimants by virtue of 50% of contributory negligence assessed would be entitled for an amount of Rs.2,61,800/-. It is ordered accordingly that the claimants shall be entitled for total compensation of Rs.2,61,800/- instead of Rs.1,69,250/- as has been awarded by the Tribunal. The said amount shall be paid by the respondents No.1, 2, 4 & 5 as has been decided by the Tribunal.

9. The appeal stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit