

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 765 of 2014

1. Smt.Vachna Murlidhar Naik W/o Late Murlidhar Laxminarayan Naik Aged About 32 Years R/o C/o Shri Govind Shivrai Fayde Flats No. 11, Ganpati Niwas, Bhagat Singh Road, Near Tai Pingle Chowk, Dombiwali East- 421201, Distt. Thane Maharashtra,
2. Minor Ku. Prapti D/o Late Murlidhar Laxminarayan Naik Aged About 11 Years Thru- Mother Smt. Vachna Murlidhar Naik, Sidow of Late Murlidhar Laxminarayan Naik, aged about 32 years, R/o C/o Shri Govind Shivrai Fayde Flats No. 11, Ganpati Niwas, Bhagat Singh Road, Near Tai Pingle Chowk, Dombiwali East 421201, Distt. Thane Maharashtra, District : Thane, Maharashtra

---- Appellants/claimants

Versus

1. Govind Das S/o Ranjit Das R/o Mitthumuda, Raigarh, Tah. And Distt. Raigarh C.G. - driver.
2. Parshuram Thakur S/o Radheshyam Thakur R/o Ward No. 05, Dhimrapur, Raigarh, Tah. And Distt. Raigarh C.G.
3. The Oriental Insu.Co.Ltd. Thru- The Branch Manager, Oriental Insu.Co.Ltd., Branch Itwari Bazar, Raigarh C.G.
4. Laxminarayan S/o Upendra Naik Aged About 67 Years Occupation- Hotel Owner, Proprietor- Hotel Guruprasad, R/o National Highway No. 66 Old N.H. 17, Koteswar, Tah. Kundapur, Distt. Udupi Karnataka, District : Udupi, Karnataka
5. Smt. Sumati W/o Laxminarayan Aged About 62 Years R/o Hotel Guruprasad, R/o National Highway No. 66 Old N.H. 17, Koteswar, Tah. Kundapur, Distt. Udupi Karnataka, District : Udupi, Karnataka

---- Respondents

For Appellants	:	Shri Malay Kumar Bhaduri, Advocate.
For Respondent No.3	:	Shri NK Malviya, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

04/12/2018

This appeal is by the claimants against the award 1.5.2014 passed by Additional Motor Accident Claims Tribunal, Raigarh in Claim Case No.1/2012 awarding total compensation of Rs.17,57,704/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 to 3 jointly and severely and holding the deceased contributory negligent to the extent of 50%.

02. As per claim petition, on 16.12.2010 at around 10 pm while deceased Murlidhar Laxminarayan Naik, aged 38 years, earning Rs.50,326/- per month by working in Jindal Steel, was riding his motorcycle, his vehicle was dashed by truck bearing No. CG 13 ZC 0362, driven by non-applicant No.1 in a rash and negligent manner, as a result of which Murlidhar suffered grievous injuries and died on the spot.

03. On claim petition being filed by the claimants under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that on the date of accident the deceased was 38 years of age, therefore, as per decision of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121***, multiplier of 15 would be applicable whereas the Tribunal has applied multiplier of 12. Further, no amount towards future prospect has been given and in view of decision in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, there should be 50% addition in the annual income of the deceased under this head. He also submits that no contributory negligence on the part of the deceased has been proved by any cogent evidence whereas claimants witness No.2 Laxmi Prasad Sahu has though stated in examination-in-chief that it was head-on collision between the offending truck and the motorcycle of the deceased but in cross-examination on question being put to him by the Court he clarifies that the driver of the offending vehicle truck was driving the truck in such a manner that the deceased was having no space to move away from there. As such, the finding regarding contributory negligence recorded by the Tribunal is erroneous and is liable to be set aside. Lastly he submits that the Tribunal has also not awarded sufficient amount under the conventional heads which may be enhanced suitably.

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded

compensation, which needs no interference by this Court. So far as contributory negligence is concerned, he also relies on the evidence of AW-2 Laxmi Prasad Sahu and further submits that the driver of the offending vehicle has already been acquitted by the appellate Court by giving him benefit of doubt.

06. Heard learned counsel for the parties and perused the material available on record.

07. As per decision in *Salra Verma* (supra), multiplier of 15 is applicable for the persons falling in the age group of 36-40 years and therefore, the Tribunal was not justified in applying multiplier of 12. Further, considering the nature of job of the deceased and his age, as per decision in *Pranay Sethi* (supra), there should be 50% addition to the annual income of the deceased towards future prospect, which has not been awarded by the Tribunal. Likewise, under the conventional heads, the claimants are entitled for a lumpsum amount of Rs.70,000/-.

08. As regards contributory negligence, having gone through the record and the documents produced before the Court, Ex.P/1 charge sheet filed against non-applicant No.1/driver under Section 304A of IPC for driving rashly and negligently, Ex.P/2 seizure memo of the offending vehicle; the spot map produced and proved before the Tribunal which shows that the deceased was dragged for near about 100 meters by the offending vehicle; the fact that the driver has not been examined before the Tribunal; no evidence has been adduced by the insurance company regarding contributory negligence and the evidence of AW-2 Laxmi Prasad Sahu, in particular his statement in para-5 wherein he has specifically stated on being asked by the Tribunal that the driver of the offending vehicle truck was driving the truck in such a manner that the deceased was having no space to move away from there, this Court is of the opinion that the finding recorded by the Tribunal as to the contributory negligence on the part of the deceased is erroneous and as such, liable to be set aside and it is held that it was sole negligence of the driver of the offending vehicle i.e. non-applicant No.1 which led to the unfortunate accident.

09. On the basis of aforesaid discussions, the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.40,595/- per month.	4,38,426/- per annum after 10% deduction towards Income Tax.
02.	50% of (i) above to be added towards future prospects	2,19,213 + 4,38,426 = 6,57,639/-
03.	1/3rd deduction towards personal and living expenses of the deceased	6,57,639 – 2,19,213 = 4,38,426/-
04.	Multiplier of 15 to be applied	65,76,390/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total compensation	Rs.66,46,390/-

Since the Tribunal has already awarded Rs.17,57,704/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.48,88,686/-with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

10. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/
(Gautam Chourdiya)
Judge