NAFR

# HIGH COURT OF CHHATTISGARH AT BILASPUR

## MAC No. 372 of 2012

ICICI Lombard, General Insurance Company Limited, Registered Office ICICI Bank Towers, Bandra-Kurla Complex, Mumbai 400051, through its Legal Manager, ICICI Lombard General Insurance Company Limited, Ground Floor, Vanijaya Bhawan, Devandra Nagar Road, Raipur (C.G.).

---Appellant

Versus

1. Smt.Ravinder Kaur Walia W/o Ruliya Singh Walia, aged about 50 years.
2. Ruliya Singh Walia S/o Karam Singh Walia, aged about 59 years.
3. Parminder Kaur Walia D/o Ruliya Singh Walia, aged about 18 years.
   All are R/o L.I.G. 1084 Tatibandh, Raipur (C.G.).
4. Tarak Bana Mitro S/o Patul Kumar Mitro (Rajput), R/o Chander Roadways, Sharma Complex, Bilaspur Road, Bhanpuri, Raipur (C.G.).
5. Kanchan Masanta, R/o Panchruliya, P.O.Rakhajangal, Police Station Khadagpur, District West Midnapur (West Bengal).

---Respondents

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| For appellant/Insurance Company | : | Shri Sourabh Sharma, Advocate. |
| For respondents No. 1, 2 & 3 | : | Shri S.S.Rajput, Advocate. |

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## Hon'ble Shri Justice P. Sam Koshy

## Order on Board

13/02/2018

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 13/01/2012 passed by the learned Fifth Additional Motor Accident Claims Tribunal, Raipur (C.G.) in Motor Accident Claim Case No.26/2011.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.2,62,500/- with interest @ 9% per annum from the date of application.

3. The Insurance Company has challenged only the quantum part.

4. The counsel for the appellant/Insurance Company submits that, the quantum of compensation awarded by the Tribunal is on the higher side and therefore the same deserves suitable modification.

5. On perusal of the record, the amount of compensation awarded by the Tribunal is not found to be either exorbitant or on the higher side and thus this Court is of the opinion that, the appeal preferred by the appellant does not have sufficient merits and therefore the same being devoid of merits deserves to be rejected.

6. The counsel for the respondents/claimants submits that, they have preferred a cross objection/cross appeal under order 41 Rule 22 seeking for the enhancement of compensation. The said cross appeal has been filed with a delay of 203 days. Considering the fact that, the matter pertains to a death case, the delay in filing of the cross appeal stands condoned and the cross appeal is admitted for consideration.

7. The contention of the counsel for the claimants is that, the income of the deceased assessed by the Tribunal is on the lower side. Further the claimants also would be entitled for compensation under future prospects so also the claimants would be entitled for proper multiplier, considering the age of the deceased and the amount of compensation therefore requires suitable modification and enhancement. He further submits that, the finding of contributory negligence also was erroneous, as there was no evidence

whatsoever before the Tribunal for reaching to the conclusion of there being contributory negligence on part of the deceased.

8. So far as the finding of contributory negligence is concerned, what is apparent is that, the Insurance Company has not led any evidence to establish the contributory negligence. Further, there is no evidence on behalf of the either sides with which it could establish that, the deceased while driving the Motorcycle had crossed the wrong side of the road and hit the vehicle coming from the opposite direction. The spot map also was not produced before the Tribunal.

9. Thus, the finding of contributory negligence appears to be only on the basis of assumption and presumption which therefore is not sustainable and the same deserves to be and is accordingly set aside.

10. Further so far as quantum is concerned, perusal of record would show that, the claimants have adduced before the Tribunal that, the deceased was working as a Clerk in one of the Transport Office and that he was earning an income of Rs.6,000/- per month, but the Tribunal has not accepted the said contention only on the ground that, there has been no proper proof led by the claimants to justify the income part.

11. However, considering the period of accident which is 14/08/2010, this Court has no hesitation in reaching to the conclusion that, at the relevant point of time, even an unskilled labour would had been earning more than Rs.150-200/- per day i.e. Rs.4,500-6,000/- per month. In the instant case, the deceased was working as a Clerk in a Transport Office.

12. In the given circumstances, when an unskilled labour himself earning more than Rs.150/- per day, a person doing clerical nature of job would have been easily earning Rs.200/- per day which would bring his monthly income at Rs.6,000/-.

13. Therefore, this Court assesses the monthly income of the deceased at Rs.6,000/- instead of Rs.4,500/- as assessed by the Tribunal. The claimants would also be entitled for 40% of the income towards future prospects which come to Rs.2,400/-. If Rs.2,400/- is added to the monthly income, the figure would become Rs.8,400/- per month i.e. Rs.1,008,00/- yearly. Considering the fact that the deceased was a bachelor, the deduction towards the personal expenses would be half i.e. 50% which would bring the income of the deceased at Rs.50,400/- which if multiplied by applying multiplier of 18, the amount would come to Rs.9,07,200/-. Thus, the claimants shall be entitled for a compensation of Rs.9,07,200/- towards loss of dependency. In addition, the claimants would also be entitled for an additional amount of Rs.40,000/- towards the conventional head which would make the total compensation payable to the claimants at Rs.9,47,200/- instead of Rs.2,62,500/- as awarded by the Tribunal. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

14. Since the contributory negligence part has been set aside by this Court, the claimants shall be entitled for the entire compensation as calculated by this Court in the preceding paragraph.

15. The appeal of the Insurance Company thus stands rejected and the cross appeal filed by the claimants stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit