

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1236 of 2012**

1. Smt. Sarita W/o Late Jageshwar Souri, aged about 30 years, R/o Surdongar, Tah. Keshkal, Distt. Kondagaon, Chhattisgarh
2. Ku. Heena D/o Late Jageshwar Souri, aged about 5 years Minor, through guardian mother Smt. Sarita W/o late Jageshwar Souri, R/o Surdongar, Tah. Keshkal, Distt. Kondagaon, Chhattisgarh
3. Sahil S/o Late Jageshwar Souri, aged about 3 years, Minor through guardian mother Smt. Sarita W/o late Jageshwar Souri, R/o Surdongar, Tah. Keshkal, Distt. Kondagaon, Chhattisgarh

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1. Kamlesh Kumar S/o Mitturam Sinha, aged about 21 years, Chikhaladihi, Tah. Keshkal, Distt. Kondagaon, Chhattisgarh
2. Shailendra Kumar S/o Lalchand Ramteke, aged about 45 years, Keshkal, District Kondagaon, Chhattisgarh
3. Vijay Kumar S/o Jagdish Kumar Gupta, aged about 40 years, Harrapadav, Tah. Keshkal, District : Kondagaon, Chhattisgarh
4. National Insurance Com. Ltd., Central Bank Ke Upar, Jagdalpur, District : Bastar, Chhattisgarh

---- Respondents

For Appellant	:	Shri Sudeep Agrawal, Advocate
For Respondent No.4	:	Shri Kapil Main, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05/03/2018**

The present is a claimants' appeal under Section 173 of Motor Vehicles Act seeking for enhancement of compensation. The challenge is to the award dated 04.09.2012 passed by the Learned Additional Motor

Accident Claims Tribunal, Kondagaon (CG) in Claim Case No.109/2012. Vide the impugned award, in a death case under Section 166 of the MV Act, the Tribunal has awarded compensation of Rs.10,74,000/- with interest @ 6% per annum from the date of application.

2. There is no representation on behalf of the claimants. Hence, this Court had to take the assistance of Shri Sudeep Agrawal, advocate for final disposal of the appeal considering the fact that it is of year 2012.

3. The facts of the case are that deceased Jageshwar while traveling on his Motor Cycle bearing Registration No. CG 17 KA 6141 collided with a Jeep bearing Registration No. CG 06-8564 owned by Respondent No.2 and driven by respondent No. 1. As a result of the accident, deceased Jageshwar, aged around 42 years sustained grievous injuries to which he later succumbed. The legal representatives of the deceased filed a claim application under Section 166 of MV Act seeking compensation which stood decided by the impugned award. The liability of payment of compensation has been fastened upon the Insurance Company. While passing the impugned award, the Tribunal has assessed contributory negligence of 50% in the accident to occur on the part of the deceased. Thus, the claimants were awarded only 50% of the compensation which otherwise fell due.

4. Shri Sudeep Agrawal, learned counsel assisting the Court on behalf of the claimants submits that the finding of contributory negligence is per se erroneous. The finding of the Tribunal is based on the solitary evidence of the driver of the offending jeep namely Kamlesh Kumar NAW-1. The evidence of the driver of the offending vehicle is of no consequence as there could not have been any other statement which could have been made by the driver of the offending vehicle as he himself was an accused in

the criminal case in respect of the accident that occurred. Moreover, there does not appear any eye witness examined to prove the contributory negligence nor was there any other material available before the Tribunal with which the contributory negligence part could have been established. He further submits that the Tribunal has also erred in not taking into account the future prospects while calculating compensation. Thus, prayed for modification of the award suitably.

5. Learned Counsel appearing for the Insurance Company, however, opposing the appeal submits that the finding of the Tribunal does not warrant interference which seems to be based on the evidences which have come on record. Therefore, there is no scope of much interference with the said finding. Moreover, the statement of the driver can't be discarded only for the reason that he happens to be the driver of the vehicle involved in the accident. Thus, prayed for the rejection of the appeal.

6. Having heard the contentions put forth on either side and on perusal of the record what is admitted factual matrix is that the accident occurred on 08.04.2010 while the deceased was travelling on his motorcycle which was hit by a jeep from rear side resulting in his grievous injuries to which he later succumbed. Except for the evidence of Kamlesh Kumar NAW-1, there does not seem to be any material taken into consideration by the Tribunal for ascertaining contributory negligence. The evidence of Kamlesh Kumar cannot be given due weightage for the reason that the said Kamlesh Kumar was in fact an accused in the criminal case which was lodged in respect of the accident. Moreover, Kamlesh Kumar could not have taken a different stand that has taken before the Tribunal for the reason that it would have adversely affected the Criminal case which was lodged against him. In the entire proceedings, no eye witness has been examined nor any

supporting documents with which contributory negligence has been established was relied by the Tribunal. The finding of the contributory negligence deserves to be set aside also on the ground that Ex. P-3 which is a report in respect of the accident lodged by the conductor of the vehicle driven by NAW-1 Kamlesh Kumar who in his report has specifically held that the accident occurred because of the negligent driving of Kamlesh Kumar.

7. Under all the circumstances, the finding of contributory negligence does not seem to be based on sufficient materials and the same deserves to be and is accordingly set aside.

8. So far as the quantum of compensation is concerned, if we take into consideration the status of the deceased, it reveals that he was a government teacher and his monthly income undisputedly was Rs.18,962/- and yearly income was Rs.2,27,544/-. Taking into consideration the total number of claimants, the deductions towards personal expenses would have been 1/3rd which would bring the yearly income to Rs.1,51,696/-. The claimants would be entitled for 30% of the income towards future prospects which comes to Rs.45,509/- bringing the yearly income at Rs. 1,97,205/-. If the said amount is multiplied applying the multiplier of 14, the amount would become Rs.27,60,870/-. In addition, the claimants would also be entitled for a lump sum compensation of Rs. 70,000/- under the conventional head to make the total compensation payable to the claimants at Rs.28,30,870/- in stead of Rs.10,74,000/- as awarded by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

9. Since, the finding of contributory negligence has been set aside by this Court, the claimants shall be entitled for the entire amount of

compensation as quantified by this Court. The responsibility of payment of compensation shall remain on the Insurance Company.

10. The appeal thus stands allowed.

11. This Court expresses a word of appreciation to Shri Sudeep Agrawal, advocate, for effectively assisting the Court for disposal of the appeal.

12. The Registry is directed to send a copy of this order to the Secretary, District Legal Services Authority, Kondagaon (CG) who in turn shall make all efforts for serving the copy of this order to the appellants at the address shown in the cause title.

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