NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 1051 of 2012

1. Smt. Sumita Wd/o late Arun Kumar Maity, aged about 35 years,
2. Miss Priyanka D/o late Arun Kumar Maity, aged about 17 years (now 18 years)
3. Miss Payal D/o late Arun Kumar Maity, aged about 16 years

Appellant 3 is through her mother (natural guardian) Smt. Sumita (Appellant no.1)

All are resident of D.N.K. Colony Kondagaon, P.S. Kondagaon, District Kondagaon (CG)

---- Appellants

Versus

1. Uttamchand S/o Jaysingh Sahu, aged about 42 years, Residence of Sanjay Nagar Ward No.12, Dondilohara, PS Civil Line, District Durg (CG) Driver
2. M/s Bastar Travels through Dhanraj Jain S/o Ranidan Jain, aged about 44 years, main road Narayanpur, P.S. Narayanpur, District Narayanpur (CG) Owner
3. The united India Insurance Co. Ltd. through Branch Manager, Anupam Chowk, PS Kotwali, Jagdalpur, District Bastar (CG) Insurer

---- Respondents

For Appellants	:	Shri A. L. Singroul, Advocate
For Respondent No.3	:	Shri H. B. Agrawal, senior advocate along with Shri Pankaj Agrawal, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

08/03/2018

Present is a claimants' appeal under Section 173 of Motor Vehicles Act seeking enhancement of compensation. The challenge is to the award dated 11.09.2012 passed by the Additional Motor Accident Claims Tribunal, Kondagaon (CG) in Claim Case No. 71/2012. Vide the impugned award, the Tribunal, in a death case under Section 166 of the MV Act, after assessing the contributory negligence of 50% towards the deceased, has awarded a compensation of Rs.4,60,500/- from the total compensation of Rs.9,21,000/- with interest @ 6% per annum from the date of application.

2. Counsel for the appellants submits that the Tribunal has erred in as much as not awarding sufficient compensation to the claimants while quantifying the compensation. He submits that the finding of contributory negligence is also erroneous as it is without any material available on record neither is there any evidence to show that the deceased in the instant case was negligent while driving the motorcycle. The claimants was also entitled for future prospects while quantifying the compensation so also the amount awarded under conventional head is low which deserves suitable enhancement.

3. Counsel for the Insurance Company, on the contrary, opposing the appeal submits that the finding of the Tribunal does not warrant interference as the Tribunal has taken into consideration the entire evidence and materials brought before it and as such, the award seems to be a reasoned award. Thus, prayed for rejection of the appeal.

4. So far as the contributory negligence part is concerned, a perusal of record would show that no evidence whatsoever has been led by any of the respondents including the driver and the owner of the offending vehicle so also the Insurance Company. The only basis for assessing contributory negligence is the head on collision. However, the head on collision also takes place when the vehicle coming from the opposite direction crosses wrong side of the road and hit the vehicle travelling on the left side. Under the said circumstance, the driver who was travelling on the left side cannot be held responsible for contributory negligence. Thus, for ascertaining contributory negligence, there has to be some element of negligence aspect before the Tribunal as evidence to assess the Contributory negligence. In the instant case, since there was no material available whatsoever, the finding of contributory negligence is not sustainable and the same deserves to be and is accordingly set aside.

5. So far as the quantum of compensation is concerned, the deceased was earning an amount of Rs.8,000/- per month stands established from his salary slip produced before the Tribunal. Thus, this Court accepts the monthly income of the deceased at Rs.8,000/- per month and proceeds to quantify the compensation accordingly. Accepting Rs.8,000/- as monthly income, the yearly income would be Rs.96,000/-. The claimants would be entitled for 30% of the income towards future prospects making the yearly income at Rs.1,24,800/-. Considering the total number of claimants the deductions towards personal income would be 1/3rd which would bring the amount to Rs.83,200/-. If the said amount is multiplied applying the multiplier of 14 considering the age of the deceased to be 42 years at the time of accident, the amount comes to Rs. 11,64,800/- which would be towards loss of dependency. In addition, the claimants would be entitled for a lump sum compensation of Rs.70,000/- under conventional head to make the total compensation payable to the claimants at Rs.12,34,800/- in stead of Rs.4,60,500/- as assessed by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

6. Since the finding of contributory negligence has been set aside, the claimants shall be entitled for the entire amount of compensation assessed by this Court in the preceding paragraph i.e. Rs.12,34,800/- with interest as fixed by the Tribunal.

7. The appeal thus stands allowed.

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

Bhola