

HIGH COURT OF CHHATTISGARH AT BILASPUR**MISC. APPEAL (C) NO. 810 OF 2011**

1. Panchram, aged 60 years, S/o Daduram (Father)
 2. Smt. Bhagmati Bai, aged 58 years, W/o Panchram (mother)
 3. Smt. Neer Bai, aged 35 years, W/o Late Firturam Patel (wife)
 4. Khelan Kumari, aged 16 years, D/o Late Firturam (daughter)
 5. Jeevanprakash, aged 10 years, Late Firturam (son)
 6. Guneetram, aged 4 years, S/o Late Firturam (son)
- Appellants No. 4, 5 & 6 are minor through their natural guardian mother Smt. Neer Bai. All R/o Village Mohda, P.S. Hirri, Tehsil- Belha, District Bilaspur (C.G.)

... Appellants**versus**

1. Sakttar Singh, aged 48 years, S/o Surjeet Singh, R/o Heerapur, Tatibandh, P.S. Amanaka, Tehsil & District Raipur (C.G.) (Driver and Owner of Truch No. CG04-ZC-1726)
2. The Oriental Insurance Company, through its Branch Manager, in front of Adarsh Bal Mandir, Main Road, Dhamtari, Tehsil & District Dhamtari (C.G.) (Insurance Company of the Truck)

... Respondents

For Appellants	:	Mr. Rupesh Shrivastava, Advocate.
For Respondent No.2	:	Mr. Sudhir Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****31/01/2018**

1. The present is a claimants' appeal under Section 173 of the Motor Vehicles Act, 1988, seeking for enhancement of the compensation awarded.
2. Challenge in the present appeal is to the award dated 28.1.2011 passed by the Third Additional Motor Accident Claims Tribunal, Bilaspur, in Claim Case No. 143/2010.
3. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.2,21,000/- to the appellant-claimants with interest thereon at the rate of 9% per annum. While passing the award, the learned Tribunal had assessed the total compensation payable to the claimants at Rs.4,42,000/-, however, assessing the contributory negligence on the part

of the deceased, his liability has been fixed at the rate of 50% of the compensation assessed, i.e., Rs.2,21,000/-, fastening the liability for payment of the same jointly and severally upon the owner-cum-driver as well as on the insurer of the offending vehicle.

4. Learned counsel for the appellant-claimants submits that the impugned award is bad in law to the extent that the finding of contributory negligence at the rate of 50% against the deceased is erroneous as there is no sufficient evidence produced to establish the contributory negligence. Likewise, it is also a case where the income assessed by the Tribunal is on the lower side when there has been an evidence brought on record of the deceased earning more than Rs.5000/- a month. He further submits that the claimants would also be entitled for a compensation under the head, future prospects, and that the compensation under the conventional heads also deserves a suitable enhancement. He thus prayed for the appeal to be allowed and the award to be modified and enhanced suitably.

5. Learned counsel for respondent no.2-insurance company however opposing the appeal submits that it is a case where the factum of contributory negligence stands established from the nature of accident itself and the same does not warrant any interference. According to the learned counsel for the insurance company, it is a case where the deceased who was riding a two-wheeler dashed the rear portion of the Truck, which by itself shows that had he been more cautious, the accident could have been avoided. Therefore, it is established that the accident occurred on account of negligence on the part of the deceased himself. He further submits that the deceased at the time of accident also did not have a valid driving licence to drive the motorcycle. It was also the contention of the learned counsel for the insurance company that the finding of the Tribunal is that the deceased had dashed at the right side of the rear

portion of the Truck, which further shows that he was himself negligent for the accident to have occurred and the Tribunal has rightly assessed the contributory negligence on the part of the deceased. He also submitted that so far as the quantum of compensation awarded is concerned the same also has been sufficiently awarded by the Tribunal and that there is no scope of any further enhancement of compensation.

6. Having heard the contentions put forth on either side and on perusal of record, if we look into the factual details of the case, admittedly, the accident did place on 25.10.2006; the time of accident was around midnight when the area was pitch dark; the accident arose when the deceased who was driving a two-wheeler dashed against a stationary Truck from the rear side. There is no sufficient prove before the Tribunal to establish that the driver of the Truck had taken all necessary precautions of putting the indicators on so also putting the parking lights on. Moreover, the area where the accident occurred was an area where there is no street light etc., which could have provided some light in the area with which the deceased could have visualized or seen the Truck standing in a stationary position on the road from a distance.

7. Given the facts and circumstances of the case, this Court is of the opinion that the finding of contributory negligence arrived at by the Tribunal does not seem to be proper and justified and the same deserves to be and is accordingly set aside.

8. So far as the judgment of the Hon'ble Supreme Court which has been relied upon by the learned counsel for the insurance company is concerned, i.e., **Renuka Devi H. v. Bangalore Metropolitan Transport Corporation and Others, 2008 (3) T.A.C. 389**, the same is distinguishable on its facts itself, for the reason that it is not a case where the accident had occurred at around midnight time or with a stationary vehicle, but it is a

case where the accident had occurred between two moving vehicles when the claimant therein who was driving the scooty is said to have hit the rear wheel of the moving bus resulting in the accident. Whereas, in the instant case, the time of accident was at around midnight and the Truck was parked in a stationary position without there being indicators or parking lights on, nor was there sufficient light in the area with which the deceased could have seen the Truck. Thus, the said judgment would not come to the aid of the insurance company.

9. So far as the quantum of compensation is concerned, taking into account the nature of employment of the deceased and the period of accident, this Court finds the assessment of income of the deceased by the Tribunal at Rs.3000/- per month and Rs.36,000/- per annum to be just and reasonable. However, taking into consideration the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Limited v. Pranay Sethi & Others**¹ the claimants would be entitled for an increase of income at 40%, *i.e.*, Rs.14,400/-, towards the future prospects, which would bring the yearly income of the deceased at Rs.50,400/- (Rs.36000 + Rs.14400). Further, considering the fact that there were total 6 claimants, the deductions to be made would be 1/4th, that comes to Rs.12,600/-, which after deducting from Rs.50,400/- (Rs.50,400 – Rs.12,600), the amount left would come to Rs.37,800/-. If the said amount of Rs.37,800/- is multiplied applying the multiplier of 15, the amount would reach to Rs.5,67,000/- which would be the amount towards the loss of dependency which the claimants shall be entitled for, instead of Rs.4,32,000/- as assessed by the Tribunal. In addition, the claimants shall also be entitled for a lump sum compensation of Rs.70,000/- under the conventional heads. Thus, making the total compensation payable to the claimants at Rs.6,37,000/-.

¹ SLP (Civil) No. 25590 of 2014, decided on 31.10.2017.

10. As a consequence, the appeal is allowed and the impugned award stands accordingly modified and enhanced to the extent that the claimants shall be entitled to get a total compensation of **Rs.6,37,000/-** instead of Rs.2,21,000/- which has been awarded by the Tribunal. The enhanced amount of compensation shall also carry interest at the same rate as has been fixed by the Tribunal. Since the finding of contributory negligence is set aside by this Court, the claimants shall be entitled for the entire compensation awarded, *i.e.*, Rs.6,37,000/-.

Sd/-
(P. Sam Koshy)
Judge