

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 644 of 2011**

1. Smt. Kajal Ku. Patel, W/o. Late Laxman Patel, Aged about 38 years,
 2. Degree Lal, S/o. Late Laxman Patel, Aged about 19 years,
- Both are R/o. Village Sakri, Post Bhukel, Police Station Basna,
District Mahasamund Chhattisgarh

---- Appellants**Versus**

1. Gokuldas Vaishnav, S/o. Duleshwar Das Vaishnav, Aged about 43 years, R/o. Village Medapali, Police Station Saraipali, District Mahasamund Chhattisgarh
2. Mantu Agrawal, S/o. Shyam Lal Agrawal, Aged about 30 years, R/o. Village Bhawarpur, Police Station Basna, District Mahasamund Chhattisgarh
3. Choramandlam M.S. General Insurance Co. Ltd. 501/202, Industry House, Agra-Bambai Road, (A.B. Road) Indore, Tahsil and District Indore (M.P.)
Branch Office-22 New Paras Nagar, Raipur, Tahsil and District Raipur Chhattisgarh

----Respondents

For Appellants	:	Mr. Vivek Tripathi, Advocate on behalf of Mr. Awadh Tripathi, Advocate
For Insurance Company	:	Mr. Rohitashva Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****12/01/2018**

1. The present is a Claimant's appeal under Section 173 of the Motor Vehicles Act challenging the award dated 10.09.2010, passed by the Motor Accident Claims Tribunal, Mahasamund, Chhattisgarh, in Claim Case No. 36/2010.
2. Vide the impugned award, the Tribunal in a death case after fastening the contributory negligence on the part of the deceased has awarded a compensation of Rs.1,31,000/- to the Claimants with interest @ 6% per annum from the date of application.

3. The counsel for the appellant submits that it is a case where compensation awarded by the Tribunal is unreasonably low and the Claimants are also entitled for compensation under the future prospects. Likewise, the compensation under the conventional head also deserves to be suitably enhanced. He further submits that the finding of contributory negligence also is bad in law as the same is without any basis and evidence led by the respondents or the Claimants.
4. The counsel for the Insurance Company however opposes the appeal and submits that the award is otherwise fair and reasonable and there is no scope of any enhancement and the award seems to be purely based on the evidence, which have been brought on record.
5. After having heard the contentions put forth on either side and on perusal of record, this Court is of the opinion that since the accident is of December, 2008, the income of Rs.2000/- per month assessed by the Tribunal is unreasonably low as during the said period, even an unskilled labour was getting an amount of Rs.150-200/- a day, which makes between Rs.4500-6000/- a month.
6. This Court considering the facts of the case, quantifies the monthly income of the deceased at Rs.4500/- a month, which makes the yearly income at Rs.54,000/-.
7. Considering the recent decisions of the Hon'ble Supreme Court, the Claimants would also be entitled for compensation under the future prospects, which in the instant case would be 40% of his income, which makes it at Rs.21,600/- thus making the yearly income at Rs.75,600/-, of which if 1/3rd is deducted towards personal

expenses, the amount would come to Rs.50,400/-. The said amount if multiplied applying the multiplier of 15, the amount comes to Rs.7,56,000/-. It is accordingly held that the total loss of dependency would be Rs.7,56,000/-.

8. So far as the question of contributory negligence is concerned, if we peruse the evidence, which have come on record, the Claimants have specifically stated that the deceased in the instant case was not having license to drive the motorcycle. Likewise, it was also the evidence of the Claimants that at the time of accident, he was carrying more than 40 liters of milk in the motorcycle, which also contributes in the misbalancing of the motorcycle, which could have led to the accident. Thus, the finding of the contributory negligence by the Tribunal seems to be fair and reasonable and does not warrant any interference.
9. Thus, the 50% of the total amount of dependency of Rs.7,56,000/- comes to Rs.3,78,000/-, which the Claimants shall be entitled for towards loss of dependency. In addition, the Claimants shall also be entitled for a lump sum amount of Rs.70,000/- towards the compensation under the conventional head to make the total compensation payable at Rs.4,48,000/- instead of Rs.1,31,000/- as awarded by the Tribunal.
10. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.
11. The appeal stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge