

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 933 of 2011**

1. Smt. Draupati Sahu Wd/o Late Kuleshwar Sahu, Aged about 35 years,
2. Ku. Vandana Sahu D/o Late Kuleshwar Sahu, Aged about 10 years,
3. Ku. Deepika Sahu D/o Late Kuleshwar Sahu, Aged about 4 years,
4. Harsh Kumar Sahu S/o Late Kuleshwar Sahu, Aged about 2 years,

Appellants No. 2 to 4 are Minors, Through their Natural Guardian Mother Smt. Daupati Sahu (Appellant No.1)

All are R/o Village Sarkhi, Thana And Tehsil Abhanpur, District Raipur, Chhattisgarh

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1. Shaukat Khan, S/o Mohammad Khan, Aged about 60 years, R/o. Behind Vivekanand Ashram, Kukeri Talab, Thana Azad Chowk, District Raipur, Chhattisgarh

Employer/Working place Address Through: M/s. Ahmad Ji Bhai & Sons, Old Bus Stand, Raipur, Chhattisgarh.

Office C/o. Partner Abbas Bhai, S/o. Late Ibrahim Bhai, Ahmadji Colony, Raipur, Chhattisgarh (Driver)

2. Huzaifa Zafar, W/o. Abbas Zafar,

Partner- Ahmad Ji Bhai & Sons, R/o. Nalghar, Raipur, Chhattisgarh

Office Address Through: M/s. Ahmad Ji Bhai & Sons, Old Bus Stand, Raipur, Chhattisgarh (Owner)

3. The National Insurance Company Limited, Through: Divisional Manager, Address-Division Office, The National Insurance Company Limited, G.E. Road, Near Indian Post And Telegraph Office, Raipur, District Raipur, Chhattisgarh

----Respondents

For Appellants	:	Mr. K.K. Dewangan, Advocate
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Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/01/2018**

1. Present is an appeal by the Claimants under Section 173 of the Motor Vehicles Act challenging the award dated 18.03.2011, passed by the 14th Additional Motor Accident Claims Tribunal (FTC), Raipur, Chhattisgarh, in Claim Case No. 29/2010, whereby the Tribunal in a death case under Section 166 of the Motor Vehicles Act has

awarded a compensation of Rs.2,87,166/- with interest @ 9% per annum from the date of application.

2. Vide the impugned award the Tribunal has also assessed contributory negligence on the part of the deceased to the extent of 30% and thus have ordered for the Claimants to be entitled for only 70% of the compensation assessed at.
3. The contention of the counsel for the appellants is that the amount of compensation awarded is on the lower side, in as much as the income assessed also is on the lower side considering the date of accident, so also the Claimants would be entitled for compensation towards the future prospects and the amount of compensation provided under the conventional head is also deserves suitable enhancement.
4. The counsel for the Insurance Company on the contrary submits that the award does not warrant any interference as the same is based upon the evidence which have come on record. Moreover, the Insurance Company on the other hand has also filed a Cross appeal, whereby it has been pleaded that the contributory negligence assessed at 30% should be enhanced to make the contributory negligence minimum of 50% and the award be suitably modified.
5. Having heard the contentions put forth on either side and on perusal of record, what clearly reflects is that the Insurance Company in the instant case have not led any evidence to substantiate any of the grounds that they have raised including that of contributory negligence. Further, from none of the statements recorded on either side could the factum of contributory negligence be established. It appears that the finding of contributory negligence is only on the

assumption that since the accident occurred because the deceased had dashed the rear wheel of the Tanker; it has to be presumed that the deceased has also contributed towards the accident.

6. So far as the finding of the contributory negligence, this Court is of the opinion that there has to be a specific evidence brought on record by the person alleging contributory negligence to establish it.
7. Merely because the deceased was hit by the rear wheel of the Tanker by itself does not mean that there is an element of contributory negligence. It could also be a case where the Tanker which admittedly was being driven in rash and negligent manner, was driven in such a way that the deceased came under the rear wheel of the Tanker. All these are facts which could be established only from the evidence which would have come before the Tribunal. In the instant case no such evidence is available, neither is there any evidence with which it could be said that the deceased was riding his motorcycle rashly.
8. In the absence of any such evidence and in the given factual matrix of the case, this Court is of the opinion that the finding of contributory negligence is erroneous and the same deserves to be and is accordingly set-aside. The Claimants would be entitled for the entire amount of compensation.
9. So far as the amount of compensation to be enhanced is concerned, if we look at the date of accident, it is December, 2009. The income which has been assessed by the Tribunal is Rs.3000/-. It is by now almost well settled that in December, 2009, the minimum wage, which an unskilled labour would had been earning would be somewhere between Rs.150-200/- a day i.e. Rs.4500-6000/- a

month. This Court assesses the minimum i.e. Rs.4500/- as the monthly wage of the deceased instead of Rs.3000/- as assessed by the Tribunal. Rs.4500/- a month makes it Rs.54,000/- yearly, to which the Claimants shall be entitled for 25% of income towards the future prospects, which comes to Rs.13,500/-, which would make the total income at Rs.67,500/-, of which 1/4 would have to be deducted towards the personal expenses, which would bring the income to Rs.50,625/-, which if multiplied applying the multiplier of 15, the amount would come to Rs.7,59,375/-. In addition, the Claimants shall also be entitled for a lump sum compensation under the conventional head of Rs.70,000/-, which would make the total compensation payable at Rs.8,29,375/- instead of Rs.2,87,166/-.

10. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.
11. The appeal thus stands allowed and disposed of and the Cross appeal of the Insurance Company stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved