

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 148 of 2013**

1. Rampyari, Wd/o. Late Krishna Ram, aged about 45 years, Occupation- Housewife,
2. Ramkewal, S/o Late Krishna Ram, aged about 18 years, Occupation- Student,
3. Leeladhar Singh, S/o Late Krishna Ram, aged about 15 years, Occupation- Student,
4. Chhandacharan, S/o Late Krishna Ram, aged about 12 years, Occupation- Student,
5. Yuvraj S/o. Late Krishna Ram, aged about 5 years, Occupation- Student,

Applicant No. 3 to 5 are minor through their natural Gaurdian, Mohter Rampyari, Widow of Late Krishna Ram,

All are R/o of Village- Khodro, P.S. & Tahsil- Rajpur, Distt.- Surguja (Chhattisgarh).

---- Appellants

Versus

1. Rajesh Agrawal, S/o Shri Chandiram Agrawal, aged about 45 years, Occupation- Contractor and running medical shop, R/o. Village- Kailash Medical Store, Bus Stand Lakhanpur, P.S.- Lakhanpur, Distt.- Surguja (Chhattisgarh).
2. Branch Manager, Oriental Insurance Company Ltd., Branch Office, Manendragarh Road Ambikapur, P.S. Ambikapur, Distt.- Surguja, (Chhattisgarh).
3. Mansai Manjhi S/o Aghunuram, aged about 30 years, Occupation- Driver, R/o. Losga, Pandripani, P.S. Lakhanpur, District- Surguja (Chhattisgarh).

---- Respondents

For Appellant	: Shri A. N. Pandey, Advocate.
For Respondent Nos.1 & 3	: Shri Sameer Singh, Advocate
For Respondent No.2	: Shri Sandeep Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Order On Board

26.09.2018

1. This is claimants' appeal seeking enhancement of

compensation awarded by the First Additional Motor Accident Claims Tribunal (for short 'the Tribunal') Ambikapur District- Sarguja in claim case No. 117/2011 vide award dated 06.12.2012.

2. Facts of the case leading to the filing of claim petition are that on the fateful day i.e. 22.04.2008, at about 6 pm in the evening deceased Krishna Ram Markam, aged about 50 years, was going from Ambikapur to village Khodro by the Boxer Motorcycle bearing registration No. CG-15C/9749 and when he came near Haritima nursery parsagudi, offending vehicle Tractor & Trolley bearing No. CG –ZD 0756 & CG 15 ZD 0757, respectively, was standing on middle of the road without signal/indicator, and due to which the deceased dashed with the offending vehicle, and sustained multiple injuries on his body and he succumbed to these injuries.

3. As against compensation of Rs. 29,36,096/- claimed by unfortunate widow and children of deceased- Krishna Ram, aged about 50 years, by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') for the death of deceased in the motor accident on 22.04.2008, the Tribunal awarded a total sum of Rs. 4,32,408/- as compensation along with interest @ 6 percent per annum from the date of application till its actual payment.

4. The Tribunal, on a close scrutiny of the evidence led, held : the accident had occurred due to involvement of Tractor & Trolley bearing No. CG – ZD 0756 & CG 15 ZD 0757, respectively and Boxer Motorcycle bearing No. CG-15C/9749 being driven by Krishna Ram

i.e. husband of appellant No. 1 and father of appellants No. 2 to 5; Tractor-trolley driver and motorcycle driver both have contributed to the cause of accident in the ratio of 50:50 percent; insurer of Tractor as well as Trolley liable for payment of compensation to the claimant as they could not establish violation of policy conditions; awarded Rs. 8,64,816/- to the appellants/claimants; deducted 50% of it on account of contributory negligence of motorcycle driver Krishna Ram, and thus awarded Rs. 4,32,408/- along with interest @ 6% per annum as compensation to the appellants/claimants.

5. Shri A.N. Pandey, learned counsel for the appellants/claimants submits that the Tribunal has erred in deducting 50 percent of award amount towards contributory negligence of Krishna Ram because there is no negligence on the part of the deceased was proved in this case by leading cogent and reliable evidence. He further submits that learned Claims Tribunal has not given any amount for future prospects and only given Rs. 5,000/- towards funeral expenses, Rs. 5,000/- towards loss of consortium and Rs. 5,000/- towards loss of estate, thus total awarded Rs. 15,000/- on other heads, which is shockingly on lower side in view of decision rendered by Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, in which the Supreme Court has awarded Rs.70,000/- on conventional heads to the claimants.

6. On the other hand, learned counsel for the respondents submits that the amount awarded by the Claims Tribunal for the death of deceased Krishna Ram is just and proper, which does not call for any interference in the instant claim petition.

7. I have heard learned counsel appearing for the parties and perused the impugned order including the record of Claims Tribunal.

8. So far as the deduction to the extent of 50% by the Tribunal toward contributory negligence of the deceased is concerned from the pleadings of the respective parties and the evidence adduced by them it stands proved that the deceased was equally responsible for causing accident as he dashed the offending vehicle which was parked without parking light or indicator. As per the statement of the applicant witness No. 2- Sahodan at the time of accident deceased was also riding the motorcycle without switching on the headlight and from the side of the tractor trolly other vehicles were passing by. Thus, the finding recorded by the tribunal holding the deceased contributory negligent to the extent of 50 % is just and proper and legally correct and deserves to be affirmed.

9. So far as income of the deceased is concerned, the claimants had duly proved the same by leading oral and documentary evidence, as such, the income of the deceased assessed by the Tribunal as Rs. 8,584 per month can not be faulted with. However, as the deceased was 51 years of age at the relevant time, the Tribunal was to add 15% of monthly income of the deceased towards future prospects in view of decision rendered by Supreme Court in the matter of **National Insurance Co. Ltd. Vs. Pranay Sethi (Supra)**. Thus keeping in view the decision rendered by the Supreme Court in the matter of **Pranay Sethi (Supra)**, I propose to re-compute the amount of compensation as under :-

Sl. No.	Heads	Calculation
01.	Income of the deceased	Rs. 8,584x12= 1,03,008/- per annum
02.	15% of above to be added towards future prospects	Rs. 103,008+15451= 118459/-
03.	1/4th deduction towards personal and living expenses of the deceased	118459-29615= Rs. 88,844/-
04.	Multiplier of 11 to be applied	Rs.88,844.2x11= Rs. 9,77,286/-
05.	After deduction of 50% toward	9,77,286/2 = Rs. 4,88,643/-

	contributory negligence of the deceased	
06	Toward conventional heads	Rs. 70,000/-
	Total compensation =	Rs. 5,58,643/-

10. In view of foregoing, the appeal is allowed in part. The compensation of Rs. 4,32,408/- awarded by the Tribunal is enhanced to Rs. 5,58,643/-. The above enhanced amount of compensation of Rs.1,26,235/- shall carry interest @ 6 percent per annum from the date of application till its actual payment. Rest of the conditions mentioned in the award shall remain intact. The award stands modified to the above extent.

11. The respondent No. 2/ Oriental Insurance Company Ltd. is granted three months' time to deposit enhanced amount of compensation of Rs. 1,26,235/- along with interest before the concerned Tribunal. No order as to costs.

Sd/-

(Gautam Chourdiya)
JUDGE