

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 850 of 2013

Reserved on 3-8-2018

Decided on 27-8-2018

1. Smt. Leela Korram W/o Late Sunder Korram Aged About 26 Years R/o Chichadi, Post- Marangpuri, Vishrampuri, Distt. Kondagaon C.G., Chhattisgarh
2. Vivek Korram S/o Late Sunder Korram Aged About 11 Years Minor, Thru- Mother Smt. Leela Korram, R/o Chichadi, Post- Marangpuri, Vishrampuri, Distt. Kondagaon C.G., District : Kondagaon, Chhattisgarh
3. Svitee D/o Late Sunder Korram Aged About 8 Years Minor, Thru- Mother Smt. Leela Korram, R/o Chichadi, Post- Marangpuri, Vishrampuri, Distt. Kondagaon C.G., District : Kondagaon, Chhattisgarh

---- Appellants

Versus

1. Laxmanram S/o Bhojiram Aged About 37 Years R/o Balodgahan, Thana- Gurur, Distt. Durg C.G., Chhattisgarh
2. Pukhraj Chandak S/o Badrinarayan Chandak R/o Motitalabpara, Jagdalpur, Distt. Bastar C.G., District : Bastar(Jagdalpur), Chhattisgarh
3. Cholanamangalam M.S. General Insurance Co. Ltd. S/o Thru- Branch Manager, Branch Office, 22 Naya Parans Chowk, Raipur C.G., District : Raipur, Chhattisgarh
4. Devi Singh S/o Late Mangluram Aged About 60 Years R/o Chichadi, Post- Marangpuri, Vishrampuri, Distt. Kondagaon C.G., District : Kondagaon, Chhattisgarh
5. Smt. Sona Bai W/o Devi Singh R/o Chichadi, Post- Marangpuri, Vishrampuri, Distt. Kondagaon C.G., District : Kondagaon, Chhattisgarh

---- Respondents

For Appellants	:	Mr. Parag Kotecha and Mr. Alok Tiwari, Advocates.
For respondents No. 1 & 2	:	None
For respondent No.3	:	None though served.

SB: Hon'ble Mr. Justice Ram Prasanna Sharma

CAV Order

1. The claimants/appellants, being wife, son and daughter of the deceased and dependants on the deceased Sunder Korram who died in a motor accident on 4-9-2011, have preferred this appeal under Section 173 of the Motor Vehicle Act, 1988 against the award dated 6-8-2013 passed by the Additional Motor Accident Claims Tribunal, Uttar Bastar, Kanker (CG) in Claim Case No. 4 of 2013, wherein the said Tribunal awarded compensation of Rs.4,75,920/- .
2. As per case of the claimant/appellants, on 4-9-2011 at 7.30 pm deceased Sunder Korram aged about 35 years was going on his motor-cycle (Boxer Discover) towards village Balodgahan where respondent No.1 negligently stationed his truck bearing registration No. CG -17-HO 951 and parked in the middle of road without any indicator or parking lights due to which motorcycle dashed the truck, resulting into death of Sunder Korram.
3. The claim petition was filed by wife, son, daughter , father and mother of the deceased and after hearing both the parties, the tribunal awarded the compensation as mentioned above.
4. Present appeal is filed by the claimants for enhancing the compensation on the following grounds.:

I) The Tribunal erred in holding that deceased was

also negligent for the said accident and deduction of 50% from awarded sum on account of contributory negligent is contrary to the evidence adduced before the tribunal.

- ii) The tribunal erred in not considering the future prospects and compensation to that extent has not been granted.
 - iii) The Tribunal erred in calculation of compensation on the basis of basic pay of the deceased instead of gross pay Multiplier of 18 ought to have been applied instead of 17.
 - iv) The tribunal has overlooked the total number of dependants and applied wrong deduction on account of personal expenses of the deceased. The amount awarded by the tribunal under various permissible heads is on lower side which requires to be enhanced.
5. I have heard learned counsel for the appellants and perused the record and impugned award passed by the Tribunal.
6. The first question for consideration of this Court is whether it is a case of contributory negligence. Naturam Markam (AW/2) is a person who reached the spot just after the incident. As per version of this witness, the offending vehicle truck was stationed in the middle of the road near R.E.S. Colony, Bahigaon in National Highway. He further deposed that no indicator or parking light was there in the said truck. The deceased dashed from back side of the truck resulting in his

death. In the cross examination of the said witness no attempt has been made to discredit the version of the said witness. When the said stationary vehicle was without indicator or parking light, the deceased who was sitting in a motorcycle could not stop his vehicle, therefore, it cannot be said that deceased was lacking in duty of care in the facts and circumstances of the case. Therefore, finding of the tribunal regarding contributory negligence which is based on dashing of truck from back side is not sustainable. From the evidence it is not established the deceased has not taken care while driving the motor-cycle. The finding of the tribunal regarding contributory negligence is liable to be and is hereby reversed. It is decided that accident occurred due to negligent act on the part of the respondent No.1, therefore, deduction by the Tribunal on account of contributory negligence is not sustainable.

7. As per record of the Tribunal deceased was aged 35 years at the time of incident and he was regular employee of Health Department of State Government. As per statement of Yashwant Kumar Dhruw (AW/3), who is Block Medical Officer, Community Health Centre, Kaskal, he was regular employee and was earning regular income, he is entitled 50% of the income from future prospects as per pronouncement

by Hon'ble the Supreme Court in the matter of **Sarla Verma and others vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121**. Again, as per claim application, five persons are dependants on the deceased, therefore, deduction will be 1/4th for his personal expenses.

8. As per evidence of Yashwant Kumar Dhruw (AW/3), deceased was getting salary of Rs.9,086/- per month after deduction but the Tribunal assessed the dependency on the basis of basic pay while the deceased was getting Rs.9,086/- as house-hold salary, therefore, for calculating dependency, house-hold salary shall be taken into consideration and not the basic pay. The finding of the tribunal on this count is also not sustainable. As the house-hold salary of the deceased was Rs.9,086/- and 1/4th shall be deducted for personal expenses of the deceased, monthly dependency of the appellants comes out to Rs.6,815/- which comes out to Rs.81,780/- per annum. As the age of the deceased was 35 years at the time of incident, multiplier of 17 shall be applied for total dependency which comes out to Rs.13,90,260/- and 50% of the amount shall be awarded for future prospects which comes out to Rs.6,95,020/-. In all the amount comes out to Rs.20,85,280/- and Rs.70,000/- shall be awarded on conventional head as per law laid down by Hon'ble the

Supreme Court in the matter of **National Insurance Company Limited vs. Pranay Sethi, reported in AIR 2017 SC 5157**. The total award of compensation shall be Rs.21,55,280/-.

9. Accordingly, the appeal is partly allowed and the award is passed in favour of the appellants and against respondent No.3/Insurance Company as under:

- i) Respondent No.3 Insurance Company shall pay Rs. 21,55,280/- (Rupees twentyone lakh fifty-five thousand, two hundred eighty)/- to the appellants/claimants within 60 days from the date of passing of the order, failing which 9% interest per annum shall be charged.
- ii) The amount deposited shall be disbursed to the appellants/claimants as per direction of the Tribunal.
- iii) Remaining part of the award passed by the Tribunal shall remain as it is.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju