

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MAC No. 537 of 2013**

1. Smt. Hema Devi Yadav Wd/o Late Vinod Yadav, aged about 25 years,
2. Devendra Kumar Yadav S/o Late Vinod Yadav, aged about 2 years,
3. Ku. Khushi Yadav D/o Late Vinod Yadav, aged about 1 years,
4. Smt. Reshma Devi W/o Girja Singh Yadav, aged about 55 years,
5. Girja Singh Yadav S/o Late Sarju Singh Yadav, aged about 60 years,

No. 2 and 3 are minor through his guardian mother Smt. Hema Devi Yadav,

All are R/o. Village Nagoikhar, Thana- Darri, Tahsil Katghora, Distt.- Korba (C.G.), At present R/o Transport Nagar, Tifra, Thana – Civil line, Revenue/Civil District- Bilaspur

---- Appellants**Versus**

1. Dharmendra Kumar Mehta S/o. Ramchandra Mehta, aged about- 28 years, R/o. Village- Dhelwadih Colliery, Thana Katghora, Revenue/Civil District- Korba (C.G.)
2. Ram Prakash Jaiswal S/o. Shri Ram Manohar Jaiswal, aged about- 45 years, R/o. Village- Dhelwadih Colliery, Thana Katghora, Revenue/Civil District- Korba (C.G.).
3. Branch Manager, Shriram General Insurance Company Ltd. Regional Office- 1003-8, RIIC Industrial Area, Seetapura, Revenue/Civil Distt.- Jaipur (Rajsthan).

---- Respondents

For Appellants : Shri Sameer Singh, Advocate.
For Respondent No. 3 : Shri S. S. Rajput, Advocate and Shri
Deepak Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

19.09.2018

1. This is claimants' appeal seeking enhancement of compensation awarded by the First Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Tribunal') in claim case No. 122/2011 vide award dated 10.09.2012.
2. Facts of the case leading to filing of claim petition are that on the fateful day i.e. 28.05.2011, deceased namely Vinod Yadav was driving truck bearing registration No. CG 12/C-3356 from Raipur to Korba, at that time, the respondent No. 1 was coming from Bilaspur-Korba side by driving his offending vehicle trailer bearing registration No. CG 04 JB/8349 rashly and negligently and dashed the truck of the deceased namely Vinod Yadav, as a result of which, Vinod Yadav sustained several injuries and thereafter died during treatment in CISM Hospital.
3. The widow, children and parents of deceased Vinod Yadav, aged about 28 years, by filing application under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') claimed compensation of Rs. 24,56,000/- for the death of deceased in the motor accident on 28.05.2011. However, the Tribunal awarded a total sum of Rs. 4,34,500/- 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 by both the parties, held : the accident had occurred due to head on collision between Truck bearing registration No. CG-12/C-3356 being driven by deceased – Vinod Yadav and the Trailer bearing registration No. CG-04-JB-8349 being driven by Dharmendra Kumar Mehta/respondent No. 1; deceased- Vinod Yadav as well as respondent No. 1 equally contributed to the cause of accident; respondent No. 3/insurance company liable for payment of compensation to the appellants as it could not establish violation of policy conditions; assessed the amount of compensation as Rs. 8,79,000/-. After deducting 50 percent from it towards contributory negligence of the deceased, awarded Rs. 4,34,500/- as compensation to the claimants with interest @ 6 percent per annum from the date of application till its actual payment.

5. Learned counsel appearing for the appellants submits that the Tribunal has fallen in error in holding the deceased equally negligent to the cause of accident, and thereby, in deducting 50 percent of amount of compensation towards contributory negligence of the deceased. He further submits that learned Claims Tribunal has not given the 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 awarded a total sum of Rs. 15,000/- conventional 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/- for other heads i.e. loss of estate, loss of consortium and loss of funeral expenses to the unfortunate widow and children of the deceased.

6. On the other hand, learned counsel for the respondents submits

that the amount awarded by the Claims Tribunal for the death of deceased- Vinod Yadav is just and proper, which does not call for any interference in the instant claim award.

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

7. In the facts and circumstances of the case, the Tribunal has rightly held the deceased guilty of contributory negligence and has rightly deducted 50 percent of award amount towards his contributory negligence and as such, I do not find any illegality in the award impugned warranting interference by this Court.

8. As per para 12 of the impugned award, deceased -Vinod Yadav being a driver was earning Rs. 6,000/- per month and the same has been duly proved by the claimants. The above finding in respect of income of the deceased appears to be just and proper. However, the Tribunal has not granted any amount towards future prospect and therefore in view of decision of the Hon'ble Supreme Court in the matter of Pranay Sethi (Supra) considering the age of the deceased between 30 to 35 years and his nature of job 40%, of his annual income is to be added thereto towards future prospect thus, the claimants are held entitled for compensation in the following manner:

SL. No.	Heads	Calculation
01	Income of the deceased @ Rs. 6000/-	Rs. 6000 x 12 =Rs.72,000/- per annum
02.	40% of above to be added towards future prospects	(72,000 + 28,800) = Rs. 100800/-

03	1/4th deduction towards personal and living expenses of the deceased	(100,800-25,200) = Rs. 75,600/-
04	Multiplier of 16 to be applied	75,600x16 = Rs. 1209,600/-
05	50% deduction towards contributory negligence	Rs. 604,800/-
05	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
	Total compensation	Rs. 6,74,800/-

Since the Tribunal has already awarded Rs. 4,34,500/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of 2,40,300/- with interest @ 6% per annum from the date of application till realization.

9. In the result the appeal is allowed in part with modification in the impugned award of the above extent. However, rest of the conditions mentioned in the award shall remain intact.

10. The respondent No. 3/ Shriram General Insurance Company Limited is granted two months' time to deposit enhanced amount of compensation of Rs. 2,40,300/- along with interest before the concerned Tribunal. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

