

NAFR

**HIGH COURT of CHHATTISGARH, BILASPUR****MAC No. 109 of 2012**

1. Sukhiram @ Sukhiya S/o late Shri Bura Nirmalkar, aged about 45 years.
  2. Smt. Amrit Bai W/o Shri Sukhiram@ Sukhiya Nirmalkar, aged about 40 years.
  3. Mukesh Kumar S/o Shri Sukhiram@ Sukjiya Nirmalkar, aged about 18 years.
  4. Rajendra Kumar S/o Shri Sukhiram @ Sukhiya Nirmalkar, aged about 16 years.
- Appellant No.4-Minor, Through The Father Natural Guardian Shri Sukhiram @ Sukhiya Nirmalkar S/o Late Bura Nirmalkar.  
All R/o Village- Jalso, P.S. Pachpedi, Tah- Masturi, District- Bilaspur (CG).

**---- Appellants****Versus**

1. Srikrit Das Manikpuri S/o Shri Manohar Das Manikpuri, R/o village Buchihardi, PS Pachpedi, Teh. Masturi, District Janjgir Champa (CG).
2. M/s Shyam Ashish Auto Needs Pro. Tarun Kumar Mishra S/o Shri Shyama Charan Mishra R/o Urga Chowk, Urga Korba Distt. Korba C.G. Present Address R/o Plot No. 60 Near Telephone Exchange Rajkishor Nagar, Bilaspur.
3. The Oriental Royal Insurance Company Limited, Through Divisional Manger, Divisional Office, Near Rajeev Plaza, Bus Stand Bilaspur Dist. Bilaspur C.G.

**---- Respondents**

|                       |   |                                  |
|-----------------------|---|----------------------------------|
| For Appellants        | : | Shri Anand Kesharwani, Advocate. |
| For Insurance Company | : | Shri Pankaj Agrawal, Advocate.   |

**SB: Hon'ble Shri Justice P. Sam Koshy****Judgment On Board****12.02.2018**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimants seeking enhancement of compensation against the award dated 20.10.2011 passed by the 1st Additional Motor Accident Claims Tribunal Bilaspur, in Claim Case No.189 of 2010. Vide the said impugned award, the Tribunal in a death case,

after assessing contributory negligence of 50 percent of the deceased, has awarded a compensation of Rs.80,000/- along with interest @ 9 percent per annum from the date of application.

2. The contention of the appellants is that the findings of the Tribunal is erroneous as the quantum of compensation awarded is on the lower side. He further submits that the findings of contributory negligence is also not sustainable as there was no evidence to reach to the conclusion that there was a contributory negligence and thus prayed for setting aside of the award and the quantum of compensation be suitably modified and also to set aside the findings of the contributory negligence.
3. Per contra, learned counsel for the respondent-insurance company opposing the appeal submits that there is a clear finding of contributory negligence showing that at the time of accident the deceased was travelling on a motorcycle with two pillion riders as such three persons were travelling on a motorcycle which was otherwise not permissible under Section 128 of the Motor Vehicles Act. Accordingly, he submits that the findings of contributory negligence stands proved and the said finding does not warrant any interference.
4. It was further contended by the counsel for the insurance company that the amount of compensation also has been rightly assessed by the Tribunal based on the evidence which have come on record and as such quantum part also does not warrant any interference and prayed for rejection of the appeal.

5. Having heard the contentions put forth on either side and on perusal of records, what is undisputed is the fact that the insurance company has not led any evidence to substantiate their contentions. What is also reflected is that there is a specific evidence of the claimants that the offending vehicle i.e. Dumper (Truck) came from the opposite direction and came on the wrong side of the road and hit the deceased person who were travelling on the motorcycle. This fact also stands established from the spot map which shows that the offending Dumper had gone on the wrong side of the road at the time of accident.
6. Merely because three persons were travelling on the motorcycle by itself cannot be a factor to assess contributory negligence. It may be a case of violation of the provisions of the Motor Vehicles Act, but that by itself cannot be a contributing factor for the accident to occur when there being no cogent evidence. The findings of the contributory negligence, thus arrived at by the Tribunal is not sustainable and the same is set aside.
7. So far as the quantum of compensation is concerned, it is an admitted fact that the date of accident was May, 2010. On the relevant date even an unskilled labour would had been earning Rs.150/- per day. The Tribunal has only assessed the notional income of Rs.30,000/-. This, in the opinion of this court, is unreasonably low and the assessment of the yearly income of the deceased at Rs.30,000/- is set aside and this court assesses the income of the deceased at Rs.4500/- per month @ Rs.150/- per day.

8. Accordingly, accepting the monthly income of the deceased at Rs.4500/- if 40 percent of it is added towards future prospects keeping in mind the decision of larger Bench of Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi, decided on 31.10.2017 in SLP(C)No.25590 of 2014, the monthly income would reach to Rs.6300/- i.e. Rs.75,600/- yearly, of which if 50 percent is deducted towards personal expenses as the deceased was a bachelor, the income would come to Rs.37,800/-, which if multiplied applying the multiplier of 18, the compensation would reach to Rs.6,80,400/-. Thus, it is ordered that the claimants shall be entitled for Rs.6,80,400/- towards loss of dependency. The claimants shall also be entitled for a lump sum compensation of Rs.40,000/- under the conventional heads making total compensation payable at Rs.7,20,400/-. It is ordered accordingly that the claimants shall be entitled for a total compensation of Rs.7,20,400/- instead of Rs.80,000/- as awarded by the Tribunal.
9. The enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.
10. Accordingly, the present appeal of the claimants stands allowed. Since the findings of contributory negligence has already been set aside by the Tribunal, the claimants shall be entitled for entire amount of compensation as assessed by this court.

Sd/-  
(P. Sam Koshy)  
**Judge**