

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 695 of 2012**

1. Smt. Leelawati W/o late Nohar Sai, aged about 38 years
2. Sarita D/o late Nohar Sai, aged about 20 years
3. Kamlesh S/o late Nohar Sai, aged about 18 years
4. Kartik Kumar S/o late Nohar Sai, aged about 13 years through appellant No.1.

All R/o village Kailashpur, PS Jaynagar, Tah. Surajpur, District Surajpur
(wrongly mentioned as Surguja in cause title of judgment) (CG)

---- Appellants**Versus**

1. The United India Insurance Co. Ltd. through Branch Manger, the U.I.I. Co. Branch Brahmroad, Ambikapur, District Surguja (CG)
3. Kamlesh Kumar Singh S/o Nanhu Khairwar, R/o village Kailashpur, PS Jaynagar, Tah. Surajpur (wrongly mentioned as Surguja in cause title of judgment)(CG)

---- Respondents

For Appellants	:	Shri Manoj Mishra, Advocate
For Respondent No.1	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****08/03/2018**

The present is a claimants' appeal under Section 173 of Motor Vehicles Act seeking enhancement of compensation. The challenge is to the award dated 11.04.2012 passed by the 1st Additional Motor Accident Claims Tribunal, Surajpur, District Surguja (CG) in Motor Accident Claim Case No. 94/2011. Vide the impugned award, the Tribunal after assessing the contributory negligence of 25%, from the total compensation of Rs.4,00,000/-,

has awarded an amount of Rs.3,00,000/- with interest @ 6% per annum from the date of application.

2. Counsel for the appellants submits that the income assessed is on the lower side. He further submits that the Tribunal has not granted future prospects so also the claimants were entitled for compensation under conventional head much more than what has been awarded by the Tribunal.

3. Counsel for the Insurance Company, on the contrary, opposing the appeal submits that the finding of the Tribunal does not warrant interference as the Tribunal has taken into consideration the entire evidence and materials brought before it and as such, the award seems to be a reasoned award. Thus, prayed for rejection of the appeal.

4. Having heard the contentions put forth on either side and on perusal of record, undisputedly the accident in the instant case took place on 13.10.2010. The offending vehicle was a motorcycle owned by respondent no.2 and insured with respondent no.1. It is anybody's guess that in 2010, the minimum wages which an unskilled labour was earning was more than rupees 150/- a day that makes Rs.4,500/- a month. This Court has no hesitation in assessing the income of the deceased at the minimum of Rs.4,500/- a month and Rs.54,000/- yearly in stead of Rs.36,000/- as assessed by the Tribunal. In addition, as per the recent decision of the Supreme Court, the claimants would also be entitled for compensation under the future prospects to the extent of 25% which would bring the yearly income to Rs.67,500/- If 1/4th of the same is deducted towards personal expenses taking into consideration the total number of claimants to be 4, the amount comes to Rs.50,625/- which if multiplied applying the multiplier of 14, the amount of compensation towards loss of dependency would be Rs.7,08,750/-. In addition, the claimants would be entitled for a lump sum compensation of Rs.70,000/- under conventional head to make the total compensation payable to the claimants at Rs.7,78,750/-

in stead of Rs.4,00,000/- as assessed by the Tribunal. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

5. Coming to the issue of contributory negligence, there appears to be only one line discussion in the impugned order stating that since there were two motorcycles involved in the accident and one was being driven by the deceased, he was also responsible to the extent of 25% for the accident to occur. This finding of the Tribunal does not seem to be supported with any evidence which has come on record. There is no evidence whatsoever to show that the deceased had crossed the wrong side of the road at the time of accident or that the deceased was on the middle of the road when the accident occurred. Both these aspects have to be ascertained either by way of evidence which is adduced or by way of referring to the documents like spot map of criminal case etc. However, no such material is available or has been referred by the Tribunal for reaching to the conclusion that the deceased was liable of 25% for the accident to occur. The finding of contributory negligence thus being without substantial material or evidence, the same deserves to be and is accordingly set aside.

6. Since the finding of contributory negligence has been set aside, the claimants shall be entitled for the entire amount of compensation as assessed by this Court in the preceding paragraph i.e. Rs.7,78,750/- with interest as fixed by the Tribunal.

7. The appeal thus stands allowed.

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