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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 718 of 2012**

1. Patangmurti S/o late Sawal Singh Murti, aged about 50 years.
2. Sunil Kumar Murti S/o Patang Murti, aged about 20 years.

Both R/o Village- Barekel, P.S. Pithora, Distt. Mahasamund C.G.,
Present R/o Village Tamasiwni, Tahsil-Abhanpur, Dist. Raipur C.G.

---- Appellants**Versus**

1. Kantilal Patel S/o late KD Patel, R/o Civil Line, Behind Akashwani, Police Station, Civil Line, Distt. Raipur (CG).
2. Shri Chandrashekhar Singh S/o Shri Takhatraj Singh, R/o Ring Road No. 1, Laxmi Nagar, Pachpedi Naka, District-Raipur C.G.
3. The Branch Manager, The New India Insurance Company Limited, Through Branch Manager, Branch Office, Madina Building, Jail Road, Dist. Raipur C.G.

---- Respondents

For Appellant	:	Shri Dharmesh Shrivastava, Advocate.
For respondent No.3	:	Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****07.03.2018.**

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 13.12.2011 passed by the Chief Motor Accident Claims Tribunal, Raipur (in short, the Tribunal) in Claim Case No.03/2011. Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.2,46,000/- with interest @ 6 percent per annum from the date of application after assessing 25 percent of contributory negligence on the part of the deceased.

2. The contention of the appellants is that the finding of contributory negligence is erroneous and perverse as the deceased was a pillion rider and was not driving the vehicle at the time of accident. The income assessed by the Tribunal is on the lower side. So also the claimants would be entitled for compensation under future prospects. Further, the compensation awarded under conventional heads also seems to be on the lower side. Thus, prayed for amount to be suitably enhanced.
3. The counsel for the insurance company opposing the appeal submits that the accident occurred because of three persons travelling on a motorcycle and therefore the finding of contributory negligence is proper, legal and justified. So also, the award seems to be fair and reasonable taking into consideration the age of the deceased, the period of accident and the assessment made by the Tribunal. Thus, prayed for rejection of the appeal.
4. Having heard the contentions put forth on either side and on perusal of records the undisputed facts are the date of accident to be 06.01.2011, the vehicle involved in the accident was owned by the respondent No.2 and driven by respondent No.1 and insured by the respondent No.3. The other aspect which is not in dispute is that the deceased who was a pillion rider on the motorcycle succumbed to the injuries and the claimants are the Husband and son of deceased.
5. Considering the fact that date of accident was January, 2011, when undisputedly even an unskilled labour would be earning Rs.4500-6000/- per month @ 150-200/- per day, this court assesses the

minimum of it at Rs.4500/- @ 150/- per day to be the income of the deceased instead of Rs.3000/- as assessed by the Tribunal.

6. Assessing Rs.4500/- as monthly income, the yearly income would come to Rs.54,000/-. In addition, the claimants are also entitled for 25 percent of the said amount towards future prospects which would make the yearly income at Rs.67,500/- of which if 1/3rd is deducted towards personal expenses, the amount comes to Rs.45,000/- which if multiplied by applying the multiplier of 13, the amount would come to Rs.5,85,000/-. In addition, the claimants would also be entitled for a lump sum compensation of Rs.70,000/- under conventional heads to bring the total compensation at Rs. 6,55,000/- instead of Rs.2,46,000/- as assessed by the Tribunal. Thus, it is ordered that the claimants shall now be entitled for a total compensation of Rs. 6,55,000/-.
7. Coming to the question of contributory negligence, indisputably the deceased was a pillion rider. It is settled law that a pillion rider cannot be fastened with contributory negligence for the accident to occur for the reason that the vehicle was not being driven by the pillion rider. Moreover, the fact that three persons were travelling on the motorcycle by itself can never be a ground for contributory negligence unless there is specific evidence brought on record to show the negligence on the part of each of the persons travelling on the motorcycle. Thus, in the opinion of this court, riding three persons on a motorcycle would not be a ground for contributory negligence.
8. This view of the court stands fortified from the Full Bench decision of

MP High Court in 2008 ACJ 393 (Devisingh Vs. Vikramsingh & Ors.) so also decision of this court in MAC No.138 of 2018, decided on 25.01.2018 (The United India Insurance Co.Ltd. Vs. Smt. Anju Banjare & Ors.) wherein it has been categorically held that merely because there were three persons travelling on a motorcycle by itself cannot be inferred that they were negligent while driving so as to constitute contributory negligence.

9. In view of the same, the finding of contributory negligence does not have much force and the same deserves to be and is accordingly set aside.
10. As the findings of contributory negligence has already been quashed by this court, the claimants are entitled for entire amount of compensation i.e. Rs.6,55,000/-. The above enhanced amount shall also carry interest at the rate as awarded by the Tribunal.
11. The appeal thus stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge