

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 222 of 2014

1. Sumarit Bai Kanwar W/o Late Sukhdev Prasad Kanwar, Aged About 28 Years
2. Himesh Kumar Kanwar S/o Late Sukhdev Prasad Kanwar, Aged About 4 Years
3. Chhatram Kanwar S/o Late Tikaitram Kanwar, Aged About 60 Years
4. Sonkunwar W/o Chhatram Kanwar, Aged About 58 Years
Appellant No.2 (Minor) through his natural Guardian- Mother (Appellant No.1)
All are resident of Kota, Tahsil- Kota, Civil and Revenue District Bilaspur (C.G.)

---- Appellants/Claimants

Versus

1. Santosh Kumar Kol S/o Babulal Kol, Aged About 32 Years, R/o Tulsi Awas, Rajkishore Nagar, Civil and Revenue District Bilaspur (C.G.)
(Driver of Van No. CG 04 ZP 0654)
2. Rajkumar Singh S/o Omprakash Singh, Aged About 42 Years, R/o Tulsi 4/11, Rajkishore Nagar, Civil and Revenue District : Bilaspur (C.G.)
(Possessor of Van No. CG 04 ZP 0654)
3. Smt. Vineet Tiwari, R/o Village Ganiyari, P.S. Kota, Tahsil Bilaspur, Civil and Revenue District : Bilaspur (C.G.)
(Regd. Owner of Van No. CG 04 ZP 0654)
4. Branch Manager, The New India General Insurance Company Limited, Near Bus Stand, Bilaspur, Civil and Revenue District Bilaspur (C.G.)
(Insurer of Van No. CG 04 ZP 0654)

---- Respondents

For Appellants	: Shri Pushkar Sinha, Advocate
For Respondents 1 to 3	: None
For Respondent No.4/	: Shri Shreekumar Agrawal, Senior Advocate with Shri Anand Kumar Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

14.12.2018

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the Third Additional Member of First Additional Motor Accident Claims

Tribunal, Bilaspur (C.G.). vide award dated 30.11.2013 passed in Claim Case No. 32 of 2013.

2. The Claimants/Appellants, unfortunate wife, son, mother and father of deceased- Sukhdev Prasad Kanwar aged about 36 years, claimed compensation of Rs.48,86,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the death of the deceased in the motor accident.

3. The facts of the case are that when on 08.11.2011, deceased- Sukhdev Prasad alongwith one pillion rider was going from Pali to Kusmunda on his motorcycle, on the way at about 04:00 PM in village Kuchaina mainroad, one cow suddenly came on the road due to which deceased stopped his motorcycle and was trying to stand his vehicle beside the road, Respondent No.1/driver of Maruti-Van bearing registration No. CG-04 – ZP – 0654, driving the said vehicle in a rash and negligent manner dashed the motorcycle of Sukhdev Prasad (deceased) from the backside. The Sukhdev Prasad sustained grievous injuries on his head and as a result thereof, Sukhdev Prasad died on the spot itself.

4. The learned Tribunal, in the impugned award, holding the deceased contributory negligent to the extent of 50% assessed total loss of dependency at Rs.15,75,619/- and further awarded Rs.2,500/- towards loss of estate, Rs.2,500/- for funeral expenses and Rs.5,000/- for loss of consortium. Thus, the Tribunal has awarded a total compensation of Rs.15,85,619/- in favour of the Claimants/Appellants with interest @ 6% per annum from the date of application till its realization. The Tribunal has also directed that the Respondent No.4 with Respondents 1 to 3 are jointly and severally liable for payment of compensation to the Claimants/Appellants.

5. Contention of the learned counsel for the Claimants/Appellants is that the income of the deceased, after deduction of HRA and other allowances, has wrongly been calculated by the Tribunal at Rs.14,621/- per month, whereas it should have been at Rs.17,518/- per month. He submits that under conventional heads, the

Tribunal has awarded only Rs.2,500/- for loss of estate, Rs.2,500/- for funeral expenses and Rs.5,000/- for loss of consortium which is on lower side and it may be enhanced in view of decision of the Supreme Court in the matter of **National Insurance Company Limited Vs. Pranay Sethi, (2017) 16 SCC 680**. He also submits that the Tribunal has illegally deducted 50% on account of contributory negligence on the part of the deceased whereas the Insurance Company has failed to prove the contributory negligence of the deceased by producing any document or adducing oral evidence. He relies on a decision of the Supreme Court in the matter of **Jiju Kuruvila & Others Vs. Kunjujamma Mohan & Others and connections, (2013) 9 SCC 166**.

6. Learned counsel for Respondent No.4/Insurance Company, however, opposes the appeal and submits that the Tribunal has rightly assessed the income of the deceased. He also submits that the amount awarded by the Tribunal towards conventional heads is also not on lower side. About 50% contributory negligence on the part of the deceased, he submits that the accident occurred due to rash and negligent driving of the deceased and as per postmortem report, the deceased had consumed liquor at the time of accident. Therefore, the compensation awarded by the Tribunal is just and reasonable and does not call for any interference in the instant appeal.

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

8. So far as argument relating to income of the deceased is concerned, the Tribunal has wrongly fixed Rs.14,621/- as the monthly income of the deceased. As per Ex.-P/8 – Salary Slip, the deceased was an employee of CSEB and was getting total salary at Rs.18,517/- per month which has also been proved by the evidence of AW-3 – Smt. Marry Kindo, Senior Accounts Officer, CSEB. After deducting Rs.375/- towards conveyance allowance, Rs.80/- towards washing allowance and Rs.544/- towards field allowance, the monthly income of the deceased should have

been at Rs.17,518/-. Therefore, this Court held that the monthly income of the deceased is Rs.17,518/-.

9. So far as argument relating to conventional heads is concerned, the Tribunal has erred in awarding only Rs.2,500/- for loss of estate, Rs.2,500/- for funeral expenses and Rs.5,000/- for loss of consortium which appears to be on lower side. Therefore, this Court is of the opinion that in view of the decision of the Supreme Court in the matter of *Pranay Sethi* (supra), the Claimants/Appellants are entitled to Rs.70,000/- for conventional heads.

10. So far as argument relating to contributory negligence is concerned, the Tribunal after hearing the parties and recording the evidence held that the accident was caused due to rash and negligent driving of the Maruti-Van driver/Respondent No.1. However, considering the fact that the deceased had consumed liquor at the time of accident, the Tribunal apportioned the liability for the accident in the ratio of 50:50 between the driver of Maruti-Van and the deceased.

11. The Hon'ble Supreme Court in the matter of *Jiju Kuruvila* (supra), where there was head-on collision between the car and bus, the victim was found to have consumed liquor as per the post-mortem report, held that merely on the basis of said post-mortem report it could not be concluded that the victim was driving the vehicle rashly and negligently and as such the Tribunal as well as the High Court erred in relying on that report in holding that there was contributory negligence on the part of victim.

12. In the instant appeal, as per Ex.-P/2 (FIR), it was mentioned that the vehicle (motorcycle) of the deceased had got uncontrolled on the road and white coloured Maruti-Van driven by Respondent No.1 was coming from behind and while overtaking the motorcycle of the deceased, it dashed the motorcycle from the backside. It was not mentioned in the FIR that the deceased was driving the motorcycle in a rash and negligent manner. As per statement of witness- Karam Singh Kunwar (AW-2) also, he stated in para-2 that he was going to Korba by his

bicycle, as soon as he crossed *kuchaina-basti*, one white coloured Maruti-Van bearing registration No. CG-04 -ZP -0654 coming from behind was being driven in a rash and negligent manner and while overtaking him (AW-2), the driver of Maruti-Van dashed the deceased from backside who was going in front of him (AW-2). AW-2 in his statement has not stated that the deceased was driving the motorcycle in a rash and negligent manner. Statement of AW-2 is not challenged in the cross-examination. No any evidence regarding contributory negligence on the part of the deceased was adduced by the Insurance Company. Only on the basis of postmortem report (Ex.-P/6), according to which the deceased had consumed liquor, the Tribunal held 50% contributory negligence on the part of the deceased.

13. Therefore, in the opinion of this Court, mere suspicion based on Ex.-P/6 postmortem report cannot take the place of evidence, particularly in the face of the direct evidence of AW-2 (independent witness). As such, the Tribunal erred in concluding that the said accident occurred due to the negligence on the part of the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises. Therefore, the finding given by the Tribunal regarding 50% contributory negligence on the part of the deceased is set aside.

14. In the instant appeal, Insurance Company/Respondent No.4 has not adduced any evidence and has not proved that there is any breach of policy, therefore, the liability fastened upon the Insurance Company by the Tribunal to pay compensation appears to be justified.

15. On the basis of aforesaid discussions, this Court is of the view that the Claimants/Appellants are entitled for compensation in the following manner:

Sl.No.	Head	Calculation
1	Income of the deceased	Rs.17,518/- per month
2	Now annual income of the deceased	Rs.17,518/- x 12= Rs.2,10,216/- per annum

3	¼th deduction towards personal expenses of the deceased	Rs.2,10,216/- – Rs.52,554/- = Rs.1,57,662/-
4	Multiplier of 15 applied	Rs.1,57,662/- x 15= Rs23,64,930/-
5	50% in future promotion of the deceased	Rs.11,82,465/- (Rs.23,64,930/- + Rs.11,82,465/- = Rs.35,47,395/-)
6	For conventional heads	Rs.70,000/-
	Total Compensation	Rs.36,17,395/-

Since the Tribunal has already awarded Rs.15,85,619/-, after deducting the same from the above amount, the Claimants are held entitled for additional compensation of Rs.20,31,776/-.

16. Resultantly, the appeal is allowed in part and the impugned award is modified to the extent that the Claimants/Appellants shall be entitled to a total enhanced amount of compensation of Rs.20,31,776/- with further direction of payment of interest on the enhanced amount of compensation @ 6% per annum from the date of filing of the claim petition till the date of actual payment. However, rest of the conditions of the impugned award shall remain intact.

17. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge