

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 820 of 2014**Judgment reserved on : 02.08.2018Judgment delivered on : 09.08.2018

Tata AIG General Insurance Company Limited, Second Floor, Lal Ganga Shopping Mall, G.E. Road, Raipur, Tah. + Distt. Raipur C.G., Through- Its Authorised Office Tata AIG General Insurance Company Limited Kastantiya Office Complex, Second Floor 11 Dr. Bramchari Street, Kolkata (W.B.)

---- Appellant**Versus**

1. Smt.Babli Kuldeep Wd/o Late Madan Kuldeep Aged About 24 Years.
2. Kamal Kuldeep S/o Late Madan Kuldeep Aged About 5 Years.
3. Shiba Kuldeep D/o Late Madan Kuldeep Aged About 3 Years.

Respondent No. 2 & 3 are minor, they are through- their Natural Guardian Mother Smt. Babli Kuldeep.

4. Ramu Kuldeep S/o Narayan Kuldeep Aged About 57 Years.
5. Smt. Aadra Kuldeep W/o Ramu Kuldeep Aged About 55 Years

Respondent No. 1 to 5 are R/o Village- Futka, Post- Paikin, P.S. Saraipali, Distt. Mahasamund C.G.

6. Premlal @ Guddu S/o Jalsai Sao Aged About 25 Years R/o Kanthipali, P.S. Baramkela, Distt. Raigarh C.G.
7. Bulbul Shrimani Aged not known to the appellant S/o Late H. Shrimani R/o 154, Sharda Prasad Benarjee Road, Kolkata W.B.

---- Respondents

For Appellant : Mr. G.S. Patel, Advocate.

For respondent No. 1 to 5 : Mr. Sanjay Agrawal, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV ORDER**

1. This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988

against the award dated 13.05.2014 passed by learned Chief Motor Accident Claims Tribunal, Raipur (C.G.) in Claim Case No. 20/2013 wherein, the said tribunal awarded a sum of Rs. 8,57,000/- to the claimants on account of death of one Madan Kuldeep in a motor accident dated 09.03.2013.

2. As per averments made in the claim petition, on 09.03.2013 at about 10.00 p.m. deceased was going from Saraipail to Suhela driving the truck bearing registration No. CG-04-HA-7745 and when he reached near village-Chattigirola, respondent No. 5 by driving truck bearing registration No. WB-23-B-5683 negligently dashed the truck of the deceased, who received serious injuries and ultimately died during treatment.
3. Learned counsel for the appellant submits as under:-
 - (i) That it is a case of contributory negligence and the tribunal committed grave illegality in holding that driver of the truck bearing registration WB-23-B-5683 was solely responsible for the incident. As it is a case of contributory negligence, the appellant is only liable to pay 50% of the compensation amount.
 - (ii) Learned tribunal committed illegality in awarding Rs 25,000/- towards funeral expenses and Rs. 4,00,000/- towards love and affection to claimants No. 1 to 5 which is not just and proper.
 - (iii) Claimants No. 4 & 5 are father and mother of the deceased and they are not dependent on the deceased therefore, the tribunal committed error in awarding 1/5th towards personal expenses.
4. The first question for consideration is whether it is a case of contributory negligence. In the matter of **Pramodkumar Rasikbhai Jhaveri Vs. Karmasey Kunvargi Tak and others** reported in **AIR 2002 SC 2864**,

wherein, Hon'ble the Apex Court in Para 8 at Page 2866 held as under :-

“The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as “negligence”. Negligence ordinarily means breach of a legal duty to care, but when used in the expression “contributory negligence”, it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an 'author of his own wrong'.”

5. In the present case, driver of the offending vehicle (WB-23-B-5683) did not enter into witness box to say that vehicle of the other truck, in which deceased was sitting had committed breach of duty of care in driving the vehicle. There is nothing on record to show that deceased was driving the vehicle without care or caution. In absence of any evidence, deceased cannot be blamed for the accident and it is not a case of contributory negligence.
6. In the present case, total award amount is Rs. 8,57,000/- . Rs. 4,32,000/- for dependency and Rs. 4,25,000/- on conventional head. The tribunal assessed Rs. 3,000/- per month as notional income, but on the date of incident i.e. 09.03.2013 the minimum wages was about Rs. 200 per day which comes out to Rs. 6,000/- per month i.e. double to what is assessed by tribunal. Again, the tribunal has not awarded any sum on count of future prospects, as the age of the deceased was 28 years, the future prospect will be the 50% as per law laid down in **Sarla Verma Vs. Delhi Transport Corporation & another** reported in **(2009) 6 SCC 121**, for dependency. Future prospects and minimum wages prevailing at the time of incident would have been considered then the award amount would have been more

than double for dependency what is awarded by the tribunal, therefore, the total award amount cannot be disturbed on account of amount awarded on conventional head.

7. As per provisions of Motor Vehicles Act, 1988, legal representative can file claim petition in which mother and father is always included, therefore, argument on behalf of the insurance company is not sustainable that parent are not dependent on the deceased and they cannot claim compensation. The amount deducted for personal expenses cannot be termed as unjust or improper, therefore, the arguments advanced on behalf of the appellant/ insurance company is not sustainable in the eyes of law.
8. Considering all the facts and the material available on record, this Court is of the view that the total award amount is just and proper. The award passed by the tribunal needs no modification.
9. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge