

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 228 of 2015**

1. Smt. Chitrekha Bai Wd/o Late Subhash Sahu aged about 22 years
2. Minor Ku. Aanchal D/o Late Subash Sahu aged about 2 years, Minor through Mother Chitrekha Bai W/o Late Subhash Sahu.
3. Khelan Ram Sahu S/o Mayaram Sahu aged about 55 years.
4. Smt. Pool Bai W/o Khelan Sahu aged about 51 years.

All are caste Teli, Occupation Labour and Agriculturists, R/o Village Khadaudakhurd, Post Rabeli, Police Station Pipariya, Tahsil Kawardha, Civil and Revenue District Kabirdham, C.G.

---- Appellants/Claimants

Versus

1. Ashwani S/o Sukhram Sahu aged about 23 years (Driver of the Tractor Trolley of Uderam Sahu) R/o Village Khadaudakhurd, Post Rabeli, Police Station Pipariya Tahsil Kawardha, District Kabirdham, C.G.
2. Uderam Sahu S/o Mukut Ram aged about 65 years, Caste Teli (Owner of the accidental new Hallend Tractor and Trolley) R/o Village Khadaudakhurd, Post Rabeli, Police Station Pipariya, Tahsil Kawardha, District Kabirdham, C.G.\
3. Ashok Sahu S/o Sukhram Sahu aged about 24 years, Occupation Agriculturist (Driver and Owner of the Motorcycle TVS Star No. CG09-D-2986) R/o Village Khadaudakhurd, Post Rabeli, Police Station Pipariya, Tahsil Kawardha, District Kabirdham, C.G.
4. Punaram Sahu S/o Uderam @ Pratap Singh aged about 35 years, R/o Village Khadaudakhurd Post Rabeli, Police Station Pipariya, Tahsil Kawardha, District Kabirdham, C.G.
5. Branch Manager, United India Insurance Company Limited, Rajmahal Complex Kmathi Line, Rajnandgaon, District Rajnandgaon, C.G.

---- Respondents

For Appellants : Smt. Upasana Mehta, Advocate.
For Respondent No.5 : Shri H.B. Agrawal, Senior Advocate with
Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

10.12.2018

1. This appeal is by the claimants against the award 08.01.2015 passed by the Motor Accident Claims Tribunal, Kabirdham (Kawardha), C.G. in Claim Case No.52/2012 awarding total compensation of Rs.2,92,146/- with interest @ 7 per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.
2. As per claim petition, on 11.12.2011 deceased Subash Sahu, aged about 23 years, earning Rs.10,000/- per month as Motor Mechanic, had gone to Rabeli Bazar with Ashok Sahu on his motorcycle. In the evening, they were returning from the Bazar, on the way from Rabeli to Khadaudakhurd the driver of the offending tractor trolley stopped the tractor bearing no. CG07-D-8178 and trolley bearing no.CG07-D-8179 on the road without any indication. Another tractor trolley was standing beside the offending tractor trolley and the driver and other labours were unloading the sugarcane from one tractor trolley to another. However, all of a sudden non-applicant no.1 drove the tractor troll of NA-2 in a rash and negligent manner, and the motorcycle bearing registration no. CG9-D-2986 which was being ridden by non-applicant no.3, which collided with the said tractor trolley.

After the accident, deceased was admitted in hospital and during treatment he died.

3. On claim petition being filed by the claimants i.e. wife, children and parents of the deceased under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
4. Learned counsel for the appellants/claimants submits as under:
 - (i) that income of the deceased has wrongly been considered by the Tribunal as Rs.3000/-.
 - (ii) that learned Tribunal has erred in deducting 50% towards contributory negligence on the part of the deceased, therefore, the contributory negligence is not proved by any cogent evidence, therefore, the finding of the Tribunal is not sustainable.
 - (iii) that 1/3rd deduction towards personal and living is also against the law and it should have been 1/4.
 - (iv) that no amount towards future prospect has been granted to the claimants.
 - (v) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably.

In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, (2009) 6 SCC 121, National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

5. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the

Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.

6. Heard learned counsel for the parties and perused the material available on record.
7. So far as contributory negligence of the deceased is concerned, non-applicant no.3 Ashok Sahu, owner of the motorcycle, has stated in his evidence that on the date of accident motorcycle was being ridden by the deceased and he was sitting as a pillion rider and, therefore, the offence was registered against the deceased by the police under Sections 279, 337 & 304A of IPC. However, death of the deceased the closure report was filed by the police. This witness has also stated that at the time of accident he and the deceased has consumed liquor, the evidence of this witness remains unrebutted in cross-examination. This witness in para 4 of his statement has admitted that there was sufficient space on both the side of the road where the offending vehicle- Tractor Trolley was standing. NAW-2 Puna Ram non-applicant no.4 has admitted that the accident occurred between the motorcycle and the tractor and he is the driver of the offending vehicle and that offence was also registered against him. He has further stated that offence was also registered against the deceased but subsequently closure report was filed by the police. This witness in para 19 has also admitted that the place where the accident occurred, there was a road which was wide enough and despite the offending vehicle being standing on

the road, other vehicles including truck could easily pass away. This witness has also stated that the motorcyclist by ridding the motorcycle in a rash and negligent manner dashed the offending vehicle from behind. Thus, considering the oral and documentary evidence available on record in particular the fact that at the time the deceased was drunk and hit the offending vehicle from behind despite there being sufficient space on both the side of the offending vehicle, this Court is of the opinion that the Tribunal was fully justified in holding the deceased contributory negligent to the extent of 50%.

8. As regards income of the deceased, though the claimants have pleaded that the deceased was earning Rs.10,000/- per month as Motor Mechanic but no documentary or oral evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding income, the income of the deceased is considered as Rs.4,000/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 24 years, the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi* (supra), the claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.4,000 per month.	Rs.48,000/- per annum
02.	40% of (i) above to be added	Rs.19,200/-

	towards future prospects.	Rs.48,000 + Rs.19,200 = Rs.67,200/-
03.	$\frac{1}{4}$ deduction towards personal and living expenses of the deceased	Rs.16,800/- Rs.67,200 – Rs.50,400/-
04.	Multiplier of 18 to be applied	Rs.9,07,200/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
	Total compensation	Rs.9,77,200/-

Since this Court already held that the deceased was contributory negligent to the extent of 50%, after deducting 50% from the additional amount, the compensation payable to the claimants' comes to **Rs.4,88,600/-**. However, the Tribunal has already awarded Rs.2,92,146/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of **Rs.1,96,454/-** with interest @ 7% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

09. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh