AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1511 of 2018

1. Smt. Shaildavi, Singh W/o Late Nawal Singh Aged about 40 year,
2. Manish Singh S/o Late Nawal Singh Aged about 20 year
3. Piyush Singh S/o Late Nawal Singh Aged about 18 year,

All R/o of Village Kodatarai Tah. & Distt.- Raigarh (C.G.).

---- Appellants/Claimants

Versus

1. Vasudavi Sahu S/o Hemlal Sahu

   (Owner of Vehicle No. CG-13-UJ/3740)

2. Sukadev Sahu S/o Hemlal Sahu R.-1 & R-2 R/o Village- Sindhar P.S. Bengehi Tah.- Baramkela Distt.- Raigarh (C.G.) (Driver of Vehicle No. CG-13-UJ/3740)

3. Cholamandalam M/S General Insurance Company Limited Head Office Darehouse Second Floor Netaji Shubhashchandra Bose Road Chinnai 600001.

---- Respondents

For Appellant : Shri V. K. Pandey, Advocate
For Respondent No. 3. :Shri Ghanshyam Patel, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

26.11.2018

1. This appeal is by the claimants, who are unfortunate wife and children of deceased Nawal Singh, against the award dated 20.08.2018 passed by First Additional Motor Accident Claims Tribunal, Raigarh in Claim Case No.82/2017 awarding total compensation of

5,78,125/- along with interest @ 9 per annum from the date of filing of claim petition till realization, fastening liability upon the respondent No. 3- Cholamandlam M.S. General Insurance Company Limited to pay compensation as it could not establish violation of policy conditions.

2. As per claim petition, when deceased- Nawal Singh, who is Manager of Badan Bus Service Company, on 30.7.2017 at about 4.30 o'clock was returning from village Sariya in Motorcycle M.H. Delux, near village Odekera Teentarai main road, respondent No. 2- Sukhedev Sahu while driving the Bolaro bearing registration No. CG-13-UJ/3740 rashly and negligently, dashed / hit the motor Vehicle of deceased Nawal Singh, on account of which he sustained multiple injuries in his head and leg and other parts of the body and succumbed to these injuries on the spot itself.

3. The Tribunal, on a close scrutiny of the evidence available on record, held : the accident had occurred due to head on collision between Bolero bearing Registration CG UJ 3740 being driver by its driver – respondent No. 2 and HF deluxe being driven by deceased – Nawal Singh; Bolero driver and motorcycle driver both have contributed to the cause of accident in the ratio of 75:25 percent; insurer of Tractor as well as Trolley liable for payment of compensation to the claimant as they could not establish violation of policy conditions; awarded Rs. 6,77,500/- to the appellants/claimants. After deducting 25 percent of it towards contributory negligence of the deceased, awarded Rs. 5,08,125/- and awarded Rs.70,000/- on other heads and thus awarded a total sum of Rs.5,78,125/- as compensation.

4. Learned counsel for the appellant submits that the that income of the deceased has wrongly been considered by the Tribunal as Rs.4,500/- whereas it should have been Rs.6,000/- per months. He further submits that no amount towards future prospect has been granted to the claimants in view of the judgment of the ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***. Learned counsel for the appellant also challenging the contributory negligence to the extent of 25%(1/4th) which has wrongly been deducted from the amount of compensation. In this regard he submits that there is no any contributory negligence was proved by the respondents as per evidence adduce by them and, therefore, respondent No. 2 driver of the offending vehicle is fully responsible for the accident as it has also been proved by documentary as well as oral evidence.

5. Learned counsel for the respondent No. 3/Insurance Company while supporting the award impugned, would submit that finding with regard to the contributory negligence on the part of the deceased to the extent of 25% is justified and the income of the deceased as Rs.4,500/- per months is just and proper in the facts & circumstances of the case, which does not call for any interference in the instant appeal.

6. I have heard learned counsel appearing for the parties and perused the impugned order with utmost circumspection.

7. As per the documents i.e. final report (Ex. A/2) in crime No. 139/2017; the charge sheet filed under Section 279, 304(A) of IPC against the driver of the offending vehicle; Ex. A/3 FIR registered against the driver of offending vehicle; as per Ex. A/4 spot map is also prepared and as per seizure memo (Ex.A/5) dashed motorcycle was seized by the investigating Officer; inquest report Ex. P/17, which were proved by the claimants and that documents are not rebutted. As per above stated

documents, it is also proved that the driver of the offending vehicle was driving the vehicle rashly and negligently dashed the motorcycle and, therefore, there is no evidence adduced by the respondents regarding the contributory negligence on the part of the deceased. Furthermore, learned Tribunal has already considered in award para 11 in which respondent No. 2 has not been examined himself and no other witness in this regard has been examined by the Tribunal, therefore, it is found respondent No. 2 was driving the vehicle rashly and negligently and dashed the vehicle of the deceased, as a result of which deceased-Nawal Singh died on the spot due to these injuries and, therefore, no any evidence adduced by the offending vehicle of the driver looking to the oral and documentary evidence produced by the claimant. Therefore, the findings of contributory negligence of deceased Nawal Singh recorded by the Tribunal is set aside.

8. Furthermore, income considered by the Tribunal as Rs. 4,500/- per months appears to be on lower side, it should be Rs.6,000/- per months in view of minimum wages at the relevant time as unskilled labour. The Tribunal has further fallen in error in deducting 1/4rd in place of 1/3th income of the deceased towards his personal expenses. Therefore, I propose to re-compute the amount of compensation by deducting 1/3th of the income of deceased towards his personal expenses. Further in view of judgment of the Supreme Court in **Pranay Sethi** (supra)**,** has held that 25% of the yearly income of the deceased employee should be added towards future prospect for the purpose of computation of compensation and further Rs.70,000/- should be given towards incidental heads. Thus,

claimants are held entitled for compensation in the following manner:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the deceased @ Rs.6,000/- per month.	Rs.72,000/- per annum
02.	25% of (i) above to be added towards future prospects.	Rs.72,000+ 18,000= Rs. 90,000/-
03.	1/3 rd deduction towards personal and living expenses of the deceased	Rs.90,000-Rs.30,000/- =Rs.60,000/-
04.	Multiplier of 15 to be applied, as applied by the Tribunal	Rs.60,000 x 15= Rs.9,00,000/-
05.	Towards loss of estate, loss of consortium and funeral expenses (as awarded by the Tribunal) + incidental head in view of judgment of the Supreme Court in **Pranay Sethi** (supra)	Rs.15,000 +40,000+15,000 =Rs.70,000/-
	Total compensation	**Rs.9,70,000/-**

Since the Tribunal has already awarded total compensation of Rs.5,78,125/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 3,91,875/- along with interest @ 9% 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

Amita