

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 893 of 2013**

1. Smt. Sita Chandel, w/o Deokumar Chandel, aged about 40 years,
2. Deokumar Chandel, S/o Late Kishun Chandel, aged about 43 years,
3. Ku. Nandani Chandel, D/o Deokumar Chandel, aged about 20 years,
4. Ku. Roma Chandel, D/o Deokumar Chandel, aged about 18 years,

All are resident of: Village Babae Post Rakse, Police Station and Tahsil Lohara, District- Kabirdham, C.G.

---- Appellants/Claimants**Versus**

1. Aisthir Ram Sahu, S/o Manbodh Ram Sahu, aged about 52 years, R/o Village Nandini-Khundani, Police Station Nandini Nagar, Tahsil Dhamdha, District- Durg, C.G. (Driver of Truck No. C.G./07/ZC/1802)
2. Gautam Bhuwalka, S/o Omprakash Bhuwalka, aged about 42 years, R/o House No. 12, Nehru Nagar (East) Bhilai, Police Station Bhilai, Tahsil and District- Durg, C.G. (owner of Truck No. C.G./07/ZC/1802)
3. I.C.I.C.I. Lombard General Insurance Company Limited, Through Branch Manager, Pukhraj Complex, upwards State Bank of Indore, Station Road Durg, Police Station Durg, Tahsil and District- Durg, C.G. (Insurance)

---- Respondents

For Appellants	: Shri P. K. Dhurandhar, Advocate.
For Respondent Nos. 1 & 2.	: None
For Respondent No. 3	: Shri Saurabh Sharma, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****07/05/2019**

This appeal is by the claimants against the award dated 10.02.2012, passed by 3rd Additional Motor Accident Claims Tribunal, Durg, C.G. in Claim Case No.306/2011, by which after deducting 25% of contributory negligence on the part the deceased awarded total compensation of 4,38,750/- (75% of the awarded amount of Rs. 5,85,000/-) with interest @ 7.5% per annum from the date of application till realization, fastening liability on the non-applicant No. 3- Insurance Company.

02. As per claim petition, on 09.01.2011, Pramod Kumar Chandel, aged about 22 years, who was studying in B.E. (final year) at Chhattisgarh Institute of Management & Technology, Bhilai, C.G. alongwith his nephew namely Mukesh Kumar Bharadwaj was riding in his motor-cycle (pulser) bearing registration No. C.G.07-LU/0603, slowly and carefully from Bhilai to his home Village Babai and when they reached village- Arasnara Khar, non-applicant No. 1- Asthir Ram Sahu while driving the offending vehicle (Truck) bearing registration No. CG07-ZC/1802 rashly & negligently, dashed the motorcycle of the deceased from the front side, as a result thereof, he(deceased) sustained grievous injuries and succumbed to these injuries. The report was lodged in the Police Station Nandini Nagar where crime No. 18/2011 under Section 304A of IPC was registered against the driver of the said truck. The offending vehicle is owned by Non-applicant No. 2 and insured with Non-applicant No. 3.

03. On claim petition being filed by the claimants/parents and siblings of the deceased- Pramod Kumar Chandel under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits as under:

(i) that the learned Tribunal has erred in reaching to the conclusion of 25% of contributory negligence on the part of the deceased and thereby erred in deducting 25% percent of award amount towards contributory negligence of deceased – Pramod Kumar Chandel.

(ii) that no amount towards future prospect has been granted to the claimants.

(iii) that the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably and the amount awarded towards loss of love & affection to the parents & siblings of the deceased also appears to be on lower side, which deserve 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, Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018.***

05. On the other hand, learned counsel for the respondent No. 3/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. He also submits that in this case the accident occurred due to negligence of the deceased also and, therefore, the Claims Tribunal has assessed the contributory negligence to the extent of 25% on the part of the deceased as the accident occurred due to head on collision. He further submits that as per vehicle mechanical inspection report (Ex. P/10), it is found that the motorcycle of the deceased was dashed from front side therefore, the finding recorded by the learned Tribunal regarding the 25% contributory negligence on the part of the deceased is just and proper which need no interference by this Court. In support of his submission he placed reliance upon the judgment of Divisional Bench of this Court in the matter of ***Smt. Annamma Philip & Others Vs. Pusau Ram Sahu & Others*** reported in **2008 (3) CGLJ 478 (DB)**.

06. Heard learned counsel for the parties and perused the material

available on record.

07. So far as the contributory negligence on the part of the deceased is concerned, Mukesh Kumar Bharadwaj, who is eyewitness to the incident, deposed in his statement in paragraph 3 that the driver of the offending vehicle (truck) was driving the said vehicle in a rash & negligent manner and dashed the motor-cycle of the deceased, due to which the accident had occurred. Thus, it is quite apparent that it is the Non-applicant No. 1, who is driving the offending vehicle in a rash and negligent manner, and dashed the motorcycle of deceased, as a result of which, deceased suffered grievous injuries and died on the spot. No counter report was lodged by the driver of the offending vehicle against the deceased. Looking to the Final report (Ex. P/2), FIR (Ex. P/3) and Postmortem report (Ex. P/4), and the evidence of claimant witness- Mukesh Kumar Bharadwaj and considering the facts & circumstances of the case, oral and documentary evidence adduced by the parties and the manner in which the accident had occurred, this Court is of the opinion that there was no contributory negligence on the part of the deceased and the accident occurred solely on the ground of rash & negligent driving of the driver of the offending vehicle. Therefore, deduction of 25 percent from the whole compensation of Rs.5,85,000/- awarded by the Tribunal in favour of claimants is bad and unsustainable in law, which is liable to be and is hereby set aside.

08. So far as income of the deceased is concerned, at the time of accident, the deceased was studying in engineering college, therefore, income of the deceased as Rs. 5,000/- pm as notional basis at the relevant time considered by the Tribunal is just & proper. Furthermore, no future prospect has been awarded in view of the judgment of the Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, therefore, looking to the age of the deceased i.e. 22 years, 40% of the annual income should be added thereto towards future prospect. The multiplier of 18 is rightly considered by the Tribunal in view of the Hon'ble Supreme Court Judgment in ***Sarla Verma (Smt.) (supra)***. As per **Magma General**

Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram & Ors. In civil appeal No. 9581 of 2018 arising out of SLP[Civil] No. 3192 of 2018, in which, the Hon'ble Supreme Court has granted amount for loss of filial, apart from awarding towards other conventional heads, which, in the facts & circumstances of the case, is applicable to present case and in my considered opinion, Rs. 20,000/- should be added as filial head. Further considering the dependency, the nature of his job and the decisions of the Hon'ble Supreme Court in ***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.5,000 per month.	Rs. 5,000x12= Rs. 60,000/- per annum
02.	40% of (1) above to be added towards future prospects.	Rs. 60,000+ 24,000= Rs. 84,000/-
03.	After 1/2 deduction towards personal and living expenses of the deceased	Rs. 42,000/-
04.	Multiplier of 18 to be applied	Rs. 7,56,000/-
05.	Towards loss of estate and funeral expenses	Rs. 30,000/-
06	Towards filial expenses	Rs. 20,000/-
07	Total compensation	Rs.8,06,000/-

Since the Tribunal has already awarded Rs. 4,38,750/- (after deducting 25% of award amount towards contributory negligence of the deceased), after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 3,67,250/- with interest @ 6% 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

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