

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 375 of 2014**

1. Nemgiri Goswami S/o Late Shri Amol Giri Goswami, aged about 48 years,
 2. Smt. Indrani Goswami W/o Shri Nemgiri Goswami, aged about 43 years,
- Both R/o Tikaripara Thakhatpur, Police Station Thakhatpur, District Bilaspur (C.G.).

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

1. Rajjan Prasad Vishvakarma S/o Shri Horilal Vishvakarma, aged about 42 years, R/o Ward No. 9, Police Station Tilda, District Raipur (C.G.) (Driver of Truck No. C.G. 04/G/8955)
2. Sitaram Agrawal,
Salakhar Road Line, Near Gandhi Chowk, Post Office & Police Station Tilda, District Raipur (C.G.). (Owner of Truck No. C.G. 04/G/8955)
3. Shriram General Insurance Company Limited, Through the Branch Manager, Branch Office Near I.C.I.C.I. Bank, Vyapar Vihar Bilaspur (C.G.). Head Office 100003 E 8 Relay Industrial Area Sitapura Jaipur (Rajasthan) 302022. (Insurer of Truck No. C.G. 04/G/8955).

---- Respondents

For Appellants	: Shri R.R. Soni, Advocate.
For Respondent Nos. 1 & 2.	: None
For Respondent No. 3	: Shri S.S. Rajput, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****21/02/2019**

This appeal is by the claimants against the award dated 24.01.2014, passed by 1st Additional District Motor Accident Claims Tribunal, Bilaspur in Claim Case No.29/2012 awarding total

compensation of 2,92,875/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

02. As per claim petition, on 17.12.2011, deceased Ajay Goswami, aged about 22 years, student, died in the motor vehicular accident caused due to rash and negligent driving of vehicle (truck) bearing registration No. CG04-G/8955 by non-applicant No.1.

03. On claim petition being filed by the claimants/father & mother of the deceased- Ajay Goswami 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.

(iii) that multiplier of 14 has wrongly been applied and considering the age of the deceased, it should have been 18.

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

(v) that amount awarded under the conventional heads is on the lower side.

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.***

05. 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.

06. Heard learned counsel for the parties and perused the material available on record.

07. So far as the contributory negligence is concerned, applicant witness No.-1 Namgiri Goswami stated that the accident occurred due to head on collision but he could not prove that at the time of accident he was remained present at the spot. It is quite clear that, it is the Non-applicant No. 1, who is driving the offending vehicle in a rash and negligent manner, dashed the motorcycle of deceased as a result of which, deceased suffered grievous injuries and died. No counter report was lodged by the driver of the offending vehicle against the deceased. Even the driver/non-applicant No. 1 did not enter into the witness box before the Tribunal. No evidence whatsoever has been adduced by the appellant/Insurance Company or non-applicant Nos. 1 & 2 driver & owner of the offending vehicle to establish contributory negligence on the part of the deceased. Looking to the Final report (Ex. P/1), FIR (Ex. P/2), seizure memo (Ex. P/3 & 4), arrest memo (Ex. P/5), merg intimation (Ex. P/6) and Postmortem report (Ex. P/7), considering the facts & circumstances of the case, oral and documentary evidence adduced by the parties and the manner in which the accident occurred, this Court is of the opinion that the 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, the finding recorded towards contributory negligence is set aside.

08. As regards the income of the deceased, though, the claimant has pleaded that the deceased was earning Rs. 6,000/- per month by computer job, however, no evidence in support thereof has been adduced by him. In these circumstances, the monthly income of the deceased as Rs. 4,500/- per month as notional basis at the relevant time, considered by the Tribunal is just & proper. Further, considering the age of the deceased i.e. 22 years, the multiplier of 18 would be applicable in view of the Hon'ble Supreme Court Judgment in **Sarla Verma (Smt.) (supra)** and 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.4500 per month.	Rs. 4,500x12= Rs. 54000/- per annum
02.	40% of (1) above to be added towards future prospects.	Rs. 54,000+ 21600= Rs. 75600/-
03.	After 1/2 deduction towards personal and living expenses of the deceased	Rs. 37800/-
04.	Multiplier of 18 to be applied	Rs. 680400/-
05.	Towards loss of estate and funeral expenses	Rs. 30,000/-
06	Total compensation	Rs. 7,10400/-

Since the Tribunal has already awarded Rs.2,92,875/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 4,17,525/- 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