

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 328 of 2014**

1. Smt. Mamta Diwan W/o Late Tikam Singh Aged About 31 Years
2. Tejesh Kumar @ Lallu S/o Late Tikam Singh Aged About 12 Years
3. Sunder Singh Diwan S/o Late Anand Singh Diwan Aged About 60 Years
4. Smt. Bati Bai Diwan W/o Late Sunder Singh Diwan Aged About 55 Years

Appellant no. is a minor child/son being represented by the appellant no.1/Mother in relation

All the above are R/o Jhitki, P.O. Narra, P.S. Baghbahra, Distt. Mahasamund C.G.

---Appellants/Claimants**Versus**

1. Shakil Khan S/o Hamid Khan Aged About 25 Years R/o Ward No. 04, Nayapara, P.S. And Tah. Mahasamund, Distt. Mahasamund C.G.
2. Manish Harit S/o Radheshyam Harit Aged About 28 Years R/o Fingeshwar, Tah. And P.S. Rajim, Distt. Raipur C.G.
3. The New India Insurance Company Ltd. Through- Divisional Office, Madina Manzil, Jail Road, Raipur, Tah. And Distt. Raipur C.G.

---- Respondents

For Appellants	Shri Jamil Akhtar Lohani, Advocate.
For Respondent Nos. 1 & 2	None, though served.
For Respondent No.3	Shri B.N. Nande, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board**

30/01/2019

1. This appeal preferred by the appellants/claimants under Section 173 of the Motor Vehicle, Act, against the award dated 10.10.2013 passed by Motor Accident Claims Tribunal, Mahasamund, C.G., in claim case no.

172/2009, awarded a total compensation of Rs.4,82,066/- with interest at the rate of 6% per annum from the date of application till its realization, fastening the liability jointly and severally on the non-applicants no. 2 & 3.

2. As per claim petition, on 10th July, 2009 deceased Tikam Singh Diwan, aged about 35 years, earning Rs.7,728/- per month, working as Assistant Grade-II, died in the motor vehicular accident caused due to rash and negligent driving of vehicle Maruti Car bearing no. CG04-H-2793 by non-applicant No.1. At the time of accident, offending vehicle was owned by non-applicant no.2 and insured with non-applicant no.3.
3. On claim petition being filed by the claimants i.e. wife, son and parents of deceased under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.23,04,720/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above in para 1 of this judgment.
4. Learned counsel for the appellants submits that in this case deceased was going on his motorcycle and the respondent no.1 dashed the vehicle of the deceased from back side and there is no any evidence adduced by the Insurance Company or another respondent regarding any contributory negligence of the deceased. As per Ex.P-2 and Ex.P-7 its clearly proved that driver of the car had driven the vehicle in a rash and negligent manner dashed the vehicle of the deceased from back and offence is registered against driver of the vehicle as per Ex.P-2 final report

under Section 304A of IPC. As per statements of Ex.P-12 and Ex.P-13 and as per Ex.P-2 specifically mentioned this fact that the driver of the offending vehicle dashed the motorcycle of deceased from the back side, therefore, it is not proved that the deceased was negligently or rashly ridding his motorcycle or any contributory negligence was there on the part of the deceased. Claimant witness no.2 Mamta Diwan has also proved the documents Ex.P-1 to Ex.P13 and these documents are uncontroverted and no any contrary evidence is adduced by the Insurance Company or other respondents. Applicant witness no.3 Mukesh is an eye witness in this case, he has proved this fact that the motorcycle was being ridden with a moderate speed whereas vehicle Car was being driven by its driver in rash and negligent manner, he dashed the motorcycle of the deceased from the back side and that contention is not challenged by any other cogent evidence. Therefore, the learned Tribunal considering 50% contributory negligence on the part of deceased is without any evidence and as such, cannot be sustained and is liable to be set aside.

5. Learned counsel for the respondent submits that initially the claimants aggrieved by the award dated 01.04.2010 passed by Motor Accident Claims Tribunal, Mahasamund in claim case no. 172/2009 had filed an appeal before this Court challenging the quantum as well as liability. This Court vide order dated 19th March, 2013 passed in MAC No.791/10 partly allowed the appeal, set aside the impugned award and remanded the matter

to the Tribunal for deciding the issue on liability only. Thus, it is clear that this Court having found the quantum of compensation just and proper did not disturb the same and remanded the matter to the Tribunal on the issue of liability only. In these circumstances now the claimants have no right to raise the issue of quantum of compensation at this stage. Therefore, the present appeal seeking enhancement of compensation being not maintainable is liable to be dismissed.

6. Heard both the parties and perused the material available on record.
7. As regards the issue of maintainability of the instant appeal, true it is that this court vide order dated 19th March, 2013 passed in MAC No.791/2010 had remanded the matter to the Tribunal for deciding the issue of liability on merits only, specifically directing the Tribunal not to examine the issue of quantum which is already decided in favour of the claimants though partially. Thus, from the order dated 19th March, 2013, it is clear that this Court has not decided earlier the quantum of compensation challenged by the claimants in the said appeal. After remand of the matter the Tribunal considering the evidence adduced by the parties on the issue of liability, by the award dated 10.10.2013 recorded a fresh finding on the issue of liability that it is non-applicant no.3 which is jointly and severally liable along with non-applicant no.2/owner to pay compensation to the claimants. Since in the earlier round of appeal by the claimants wherein they had challenged the

quantum as well as liability, the quantum of compensation was not touched by the Coordinate Bench of this Court, the matter was remanded only for decision on the issue of liability to the Tribunal and after remand the liability has been decided afresh as mentioned above, the claimants have every right to challenge the quantum in this appeal and the same cannot be said to be untenable as contended by learned counsel for the Insurance Company.

8. So far as quantum of compensation is concerned, considering the salary certificate of the deceased according to which his monthly income of Rs.7,912/-, his age i.e. 40 years 3 months and 10 days as per his date of birth i.e. 31.03.1969 mention in his service book, the nature of his job i.e. permanent job (salaried), the dependency i.e. 4, keeping in view the decisions of 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**, the claimants are held entitled for compensation in the following manner:-

S.I.	Heads	Calculation (in rupees)
1.	Income of the deceased @ Rs.7,912/- per month	Rs.94,944 per annum
2.	30% of (i) above to be added towards	Rs.28,483/-

	future prospects.	Rs.94,944 + Rs.28,483 = Rs.1,23,427/-
3.	1/4 deduction towards personal and living expenses of the deceased	Rs.30,856/- Rs.1,23,427 – Rs.30,856 = Rs.92,571/-
4.	Multiplier of 14 to be applied	Rs.12,95,994/-
5.	Towards loss of estate, loss of spousal consortium and funeral expenses	Rs.70,000/-
6.	Towards loss of filial consortium to claimants no. 3 & 4 @ Rs.15,000/- each	Rs.30,000/-
7.	Towards of parental consortium to claimant no.2	Rs.15,000/-
	Total Compensation	Rs.14,10,994/-

9. So far as contributory negligence on the part of the deceased is concerned, keeping in view the manner in which the accident occurred, as per final report Ex.P-2 offence under Section 304A of IPC was registered against the non-applicant no.1, statements Ex.P-12 and Ex.P-13 which go to show that it is non-applicant no.1 who was negligent on his part, the other oral, ocular and other documentary evidence available on record which has been duly proved by the claimants and particularly considering that there is no other contrary evidence adduced by the non-applicants showing that the deceased was also negligent in causing the accident in any manner, this Court is of the opinion that the Tribunal was not justified in recording a finding that the deceased was equally responsible for the aforesaid accident.

Therefore, the said finding of the Tribunal regarding contributory negligence being passed on improper appreciation of the evidence on record is hereby set aside. Thus, the claimants are entitled for total compensation of Rs.14,10,994/-. Since the Tribunal has already awarded a sum of Rs.4,82,066/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.9,28,928/- with interest @ 6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

**Sd/-
(Gautam Chourdiya)
Judge**

Akhilesh