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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 903 of 2018

1. Phool Singh Korram S/o Gagra Ram Korram, aged about 50 years
 2. Smt. Manaki Bai Korram W/o Phool Singh Korram, aged about 47 years
- Both are Residents of Village Manjhipara, Dahikonga, Tahsil and District Kondagaon (C.G.)

---- Appellants/Claimants

Versus

1. Omprakash Sahu S/o Ramchandra Sahu, aged about 23 years, R/o Village Falouda (Kolar), P.S. Abhanpur, District Raipur (C.G.)
(Driver)
2. Pramodpuri Goswami S/o Rameshwar Goswami, R/o Jorapara Sarkanda, Bilaspur, District Bilaspur (C.G.)
(Owner)
3. The Branch Manager, The New India Assurance Co. Ltd. Branch Office at Jagdalpur, District Bastar (C.G.)
(Insurer)
4. Saiyyad Rafique S/o S.H. Rahim, R/o Dongaripara Kondagaon present address Rozgaripara Kondagaon, District Kondagaon (C.G.)
(Owner of the Motorcycle)

---- Respondents/Non-applicants

And

Miscellaneous Appeal (Civil) No. 699 of 2018

1. Smt. Sampati @ Sapmti Netam Wd/o Late Ashturam Netam, aged about 26 years
 2. Khemeshwar Netam S/o Late Ashturam Netam, aged about 6 years
 3. Phoolsingh Netam S/o Late Lachhindar Netam, aged about 51 years
 4. Smt Itwarin Netam W/o Phoolsingh Netam, aged about 45 years
- Appellant No. 2 is Minor through natural guardian Smt. Sampati @ Sapmati Netam (Mother)
- All are Residents of Village Bazarpara Dahikonga Tahsil and District Kondagaon (C.G.)

---- Appellants/Claimants

Versus

1. Omprakash Sahu S/o Ramchandra Sahu, aged about 23 years, R/o Village Falouda (Kolar), P.S. Abhanpur, District Raipur (C.G.)
(Driver)
2. Pramodpuri Goswami S/o Rameshwar Goswami, R/o Jorapara Sarkanda,

Bilaspur, District Bilaspur (C.G.)

(Owner)

3. The Branch Manager, The New India Assurance Co. Ltd. Branch Office at Jagdalpur, District Bastar (C.G.)

(Insurer)

---- Respondents/Non-applicants

For Appellants	:	Shri Pravin Kumar Tulsyan, Advocate
For other Respondents 1 & 2	:	None
For Respondent No. 3	:	Shri Azad Siddiqui, Advocate
For Respondent No. 4	:	Shri Shobhit Koshta, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

27.02.2019

1. Above both appeals arise out of the same accident occurred on 11.12.2016 involving the same vehicle- Eicher bearing registration No. CG-10/Y/7974 (hereinafter referred to as "offending vehicle"), they are being disposed of by this common judgment.

2. Both appeals [M.A.(C) No. 903 of 2018 & M.A.(C) No. 699 of 2018] arise out of common award dated 22.03.2018 passed by Motor Accident Claims Tribunal, Kondagaon, District Kondagaon (C.G.).

3. In M.A.(C) No. 699 of 2018 arising out of Claim Case No. 58/2017, the Claimants/Appellants, unfortunate wife, son and parents of deceased- Asturam, claimed compensation of Rs.56,50,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act for death of Asturam in the motor accident.

The learned Tribunal, in the impugned award, has assessed loss of dependency for death of Asturam of Rs.12,85,200/-. However, held the deceased contributory negligent to the extent of 25% and after deducting 25% from the amount to loss of dependency, the total loss of dependency worked out to Rs.9,63,900/- and further awarded Rs.70,000/- towards conventional heads. Thus, the Tribunal has awarded a total compensation of Rs.10,33,900/- in favour of the

Claimants/Appellants with interest @ 9% per annum from the date of claim application till realization, fastening liability on non-applicant No.3 along with non-applicants No. 1 & 2 jointly and severally.

4. In M.A.(C) No. 903 of 2018 arising out of Claim Case No. 62/2017, the Claimants/Appellants, unfortunate parents of deceased- Manbati Korram, claimed compensation of Rs.15,90,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act for death of their daughter in the motor accident.

The learned Tribunal, in the impugned award, however, held the deceased contributory negligent to the extent of 25% and non-applicant No.1, driver of the offending vehicle was held contributory negligence to the extent of 75% and has awarded total compensation of Rs.6,72,600/- in favour Claimants with interest @ 9% per annum from the date of claim application till realization, fastening liability of 75% on non-applicant No.3 along with non-applicants No. 1 & 2 jointly and severally and 25% on the Claimants of Claim Case No. 58/2017 with non-applicant No. 4 of Claim Case No. 62/2017 jointly and severally.

5. Brief facts necessary for disposal of both appeals are that on 11.12.2016 deceased- Asturam in Claim Case No. 58/2017 and deceased- Manbati Korram in Claim Case No. 62/2017 were coming from Kondagaon to their village- Dahikonga, when they reached near balari bridge, non-applicant No.1, driver of the offending vehicle, driving the same in a rash and negligent manner, dashed the motorcycle which was being ridden by Asturam and Manbati Korram was the pillion rider of the same. As a result thereof, both Asturam and Manbati Korram sustained grievous injuries and died on spot.

6. In both appeals, cross-objections have also been filed by non-applicant No.3/Insurance Company under Order XLI, Rule 22 of the Code of Civil Procedure challenging the contributory negligence held by Tribunal to the extent of 75% of driver of the offending vehicle and 25% to the extent of deceased-Asturam, whereas it should have been 50-50%.

7. In M.A.(C) No. 903 of 2018, cross-objection has been filed by non-applicant

No.4 under Order XLI, Rule 22 of the Code of Civil Procedure challenging the contributory negligence to the extent of 25% which has been imposed on non-applicant No. 4 jointly and severally with Claimants in Claim Case No. 58/2017.

Default is pointed out by the Registry as copy of deposit amount receipt of Rs.25,000/- has not been filed with cross objection by non-applicant No.4.

I.A. No. 4, application for taking document on record.

Non-applicant No.4 has filed copy of deposit amount receipt of Rs.25,000/- as Annexure-R4-I, therefore, office default is overruled.

8. Learned counsel for the Claimants submits that there was no contributory negligence on the part of deceased- Asturam, but the Tribunal has wrongly held the deceased contributory negligent to the extent of 25%. In M.A.(C) No. 903/2018 (Claim Case No. 62/2017), he further submits that as deceased- Manbati Korram aged about 27 years & was a labour, income of the deceased has wrongly been considered by the Tribunal as Rs.4,500/- per month whereas at the relevant time, it should have been Rs.6,000/- per month. In M.A.(C) No. 699/2018 (Claim Case No. 58/2017), he submits that as deceased- Asturam aged about 28 years and was running a shop of Motorcycle Repairing & Auto-Parts, income of the deceased has wrongly been considered by the Tribunal as Rs.6,000/- per month whereas at the relevant time, it should have been Rs.15,000/- per month as skilled person.

9. On the other hand, learned counsel for Respondent No. 3/Insurance Company opposes the contention made by learned counsel for the Claimants. He also submits that in both Claim Cases No. 62/2017 & Claim Case No. 58/2017, there is contributory negligence on the part of deceased- Asturam himself to the extent of 50%, but the Tribunal has wrongly held the deceased contributory negligent to the extent of 25% and non-applicant No.1, driver of the offending vehicle to the extent of 75%. In support of above contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **Raj Rani & Ors. Vs. Oriental Insurance Co. Ltd. & Ors. in Civil Appeal No. 3317-3318 of 2009 arising out of SLP(C) Nos. 27792-27793 of 2008.**

10. Learned counsel for non-applicant No.4 submits that the motorcycle which was being driven by deceased- Asturam was of non-applicant No.4. He submits that at the time of accident, the motorcycle was sold to one Anant Mandavi and relevant transfer documents have been given to Anant Mandavi, therefore, the Tribunal has wrongly fastened liability of 25% on the Claimants of Claim Case No. 58/2017 with non-applicant No. 4 of Claim Case No. 62/2017 jointly and severally to pay compensation to the Claimants of Claim Case No. 62/2017.

11. I have heard the learned counsel appearing for the parties and perused the impugned award including the records of claim petitions.

12. First, this Court considers regarding contributory negligence. It is not in dispute that the accident had occurred on 11.12.2016. Charge-sheet (Ex.-P/1) was filed against the driver of the offending vehicle and FIR (Ex.P/2) was lodged by Neelu Ram Netam (AW-2) against the driver of the offending vehicle. In FIR, it was mentioned that the offending vehicle which was being driven by non-applicant No.1 in rash and negligent manner, dashed the motorcycle due to which both deceased persons sustained grievous injuries and died on spot. AW-2 stated that deceased- Asturam along with deceased- Manbai Korram was coming from Kondagaon to their village Dahikonga by motorcycle and near Balari Bridge, offending vehicle- Eicher bearing registration No. CG-10/Y/7974 was coming from wrong side towards Jagdalpur, dashed the motorcycle due to which both deceased persons sustained grievous injuries and died on spot. AW-2 has not stated that the deceased was ridding motorcycle in a rash and negligent manner. The offending vehicle being heavier than the motorcycle, non-applicant No.1 was having greater responsibility to drive the vehicle cautiously to avoid any possibility of the accident. Therefore, in view of the above evidence, the Tribunal has committed error in holding the deceased guilty of contributory negligence to the extent of 25%. No contrary evidence has been adduced by the Insurance Company to substantiate its plea that deceased- Asturam was responsible for accident in any manner. Only on the basis of head-on-collision between the motorcycle and the offending vehicle- Eicher

bearing registration No. CG-10/Y/7974, it would not be justifiable to hold deceased- Asturam responsible for the accident to any extent. The finding of the Tribunal regarding contributory negligence of deceased- Asturam appears to be based on mere presumption and surmises. Therefore, considering overall facts and circumstances of the case and nature in quality of evidence adduced by the parties, this Court is of the view that the Tribunal has not justified in holding deceased- Asturam contributory negligent to the extent of 25% and accordingly it is held that the accident occurred due to sole negligence on the part of non-applicant No.1 only. Therefore, the judgment relied upon by the Insurance Company in the matter of *Raj Rani* (supra) is of no help to the Insurance Company.

13. So far as liability to pay compensation is concerned, in Claim Case No. 58/2017, the Tribunal has fastened liability on non-applicant No.3 along with non-applicants No. 1 & 2 jointly and severally and in Claim Case No. 62/2017, the Tribunal has fastened liability of 75% on non-applicant No.3 along with non-applicants No. 1 & 2 jointly and severally and 25% on the Claimants of Claim Case No. 58/2017 with non-applicant No. 4 of Claim Case No.62/2017 jointly and severally. Considering the facts and circumstances of the case, it is not in dispute that the said offending vehicle was duly insured with the non-applicant No.3/Insurance Company for a period from 22.07.2016 to 21.07.2017 and the accident occurred on 11.12.2016, this Court is of the view that non-applicant No.3/Insurance Company along with non-applicants No.1 & 2 jointly and severally is held liable to pay entire amount of compensation to the Claimants in both Claim Cases i.e. 58/2017 & 62/2017. In Claim Case No. 62/2017, the Tribunal has fastened liability of 25% on the Claimants of Claim Case No. 58/2017 with non-applicant No. 4 of Claim Case No. 62/2017 jointly and severally which deserves to be set aside and is hereby set aside.

14. As regards income of the deceased persons namely Asturam and Manbati Korram, in Claim Case No. 58/2017, the Claimants have pleaded that deceased- Asturam was earning Rs.15,000/- per month by running a shop of Motorcycle

Repairing & Auto-Parts but no documentary evidence in support thereof has been adduced. Therefore, looking to the certificate (Ex.-P/8) produced by the Claimants and photocopies of Cash/Credit Memo (Ex.-P/10 to Ex.-P/16) of Bastar Auto Parts, the income of deceased- Asturam is considered as Rs.6,500/- per month as per minimum wages at the relevant time for skilled person.

In Claim Case No. 62/2017, the Claimants have pleaded that deceased- Manbai Korram was earning Rs.6,000/- per month as labour but no documentary 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.6,000/- as per minimum wages at the relevant time.

15. Further, considering the age of deceased persons namely Asturam and Manbati Korram i.e. 28 & 27 years, the dependency, the nature of their jobs and the decisions of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121*** and ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, the Claimants in both Claim Cases No. 58/2017 & 62/2017 are held entitled for compensation in the following manner:

(A) In M.A.(C) No. 699 of 2018 arise of Claim Case No. 58/2017:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.6,500/- per month	Rs.78,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.78,000/- + Rs.31,200/-) Rs.1,09,200/-
3.	1/4th deduction towards personal and living expenses of Deceased	(Rs.1,09,200/- – Rs.27,300/-) Rs.81,900/-
4.	Multiplier of 17 applied	Rs.81,900/- x 17 = Rs.13,92,300/-
5.	Towards loss of estate; loss of consortium and funeral expenses	Rs.70,000/-
	Total Compensation	Rs.14,62,300/-

Since the Tribunal has already awarded Rs.10,33,900/-, after deducting the

same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.4,28,400/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

(B) In M.A.(C) No. 903 of 2018 arise of Claim Case No. 62/2017:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.6,000/- per month	Rs.72,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.72,000/- + Rs.28,800/-) Rs.1,00,800/-
3.	50% deduction towards personal and living expenses of Deceased	(Rs.1,00,800/- – Rs.50,400/-) Rs.50,400/-
4.	Multiplier of 17 applied	Rs.50,400/- x 17 = Rs.8,56,800/-
5.	Towards loss of estate and funeral expenses	Rs.30,000/-
	Total Compensation	Rs.8,86,800/-

Since the Tribunal has already awarded Rs.6,72,600/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.2,14,200/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

16. In the result, the appeals are allowed in part with modification in the impugned awards to the above extent that it is the Insurance Company/non-applicant No.3 which is liable jointly and severally alongwith non-applicants No. 1 & 2 to pay entire amount of compensation in both Claim Cases (58/2017 & 62/2017) to the Claimants.

17. If any amount has been deposited by the Claimants of Claim Case No. 58/2017 and non-applicant No.4 of Claim Case No. 62/2017 and disbursed to the Claimants of 62/2017, they are entitled to recover the same from non-applicant No.3/Insurance Company.

18. Consequently, cross objections filed in both appeals by the Insurance

Company/non-applicant No.3 is dismissed and cross objection filed in M.A.(C) No. 903 of 2018 by non-applicant No.4- Saiyyad Rafique is allowed.

19. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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