

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1025 of 2014

1. Smt. Urmila Das, Age-58 years, W/o Shri Raghunath Das
2. Raghunath Das, Age-63 years, S/o Late Shri Narsingh Das
R/o- Near Old S.B.I., Kohka-Road, Supela Bhilai, Post Office- Supela Bhilai,
Civil & Revenue District and District Durg (C.G.)

---- Appellants/Claimants

Versus

1. Smt. Pushpa Embrosh, Age-45 years, W/o Shri Judge Embrosh
(Driver of Santro Car No. C.G.-07/3994)
2. Judge Fransis, S/o Denial Embrosh, Age-50 years
(Owner of Santro Car No. C.G.-07/3994)
Both the above Respondents are R/o:-
M.I.G. II, Q.No. 334, HUDCO-Bhilai, Civil & Revenue District and District
Durg (C.G.)
3. The Branch Manager, The New India Insurance Company Ltd., Thakkar
Chamber, Power-House, Bhilai, Civil & Revenue District and District Durg
(C.G.)
(Insurer of Santro Car No. C.G.-07/3994)
4. Smt. Rashimta Das, Age 28 years, W/o Late Shri Ranjeet Das
5. Atul Das, Age-09 years, Minor S/o Late Shri Ranjeet Das

Appellant No.05 is a Minor Child/Son being represented by non-applicant
No. 04/Mother in relation, Both are R/o – C/o Madhav Das, Village- Koudia,
Post Office- Hato, Rasik Nagar, P.S. - Rajkonika, Civil & Revenue District
and District Kendrapouda (Orissa)

---- Respondents/Non-applicants

For Appellants	:	Shri J.A. Lohani, Advocate
For Respondents 1 & 2	:	Shri P.R. Patankar and Shri Vedant Bhilonde, Advocates
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

08.02.2019

1. The Appellants/Claimants have preferred this appeal under Section 173 of
the Motor Vehicles Act, 1988 seeking enhancement of compensation awarded by
the Sixth Additional Motor Accident Claims Tribunal, Durg (C.G.) vide award dated
30.07.2014 passed in Claim Case No. 07 of 2011.

2. The Claimants/Appellants are parents of deceased- Ranjeet Das, aged about 58 & 63 years, claimed compensation of Rs.29,30,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of Ranjeet Das in the motor accident. Non-applicants No. 4 is wife aged about 28 years and non-applicant No.5 is minor son aged about 9 years of deceased- Ranjeet Das.

3. Brief facts of the case are that on 17.10.2010 deceased- Ranjeet Das returning from Civic Center Bhilai to his residence on his motorcycle, when he reached near Satnam Bhavan, Sector-6, non-applicant No.1, driver of the offending vehicle Santro Car bearing registration No. CG-07 – 3994, driving the said offending vehicle in rash and negligent manner, dashed the motorcycle of Ranjeet Das. As a result thereof, Ranjeet Das sustained grievous injuries on his head and hospitalized in Sector-9 Hospital Bhilai. Thereafter, he was referred to CIMS Hospital Nagapur, and then Chandulal Memorial Hospital Nehru Nagar, Bhilai. Further, Ranjeet Das was taken for physiotherapy treatment to SCBMCHC Cuttack where he died on 18.01.2011 during course of treatment on account of injuries sustained in the accident. At the time of accident, the offending vehicle was owned by non-applicant No.2 and insured with non-applicant No.3.

4. The learned Tribunal, in the impugned award, has assessed the compensation of Rs.1,79,274/- but, the Tribunal found non-applicant No.1 as well as deceased- Ranjeet Das guilty of negligence to the cause of accident to the extent of 50:50 and awarded a compensation of Rs.89,637/- in favour of the Appellants/Claimants and non-applicants No. 4 & 5 with interest @ 6% per annum from the date of application till its realization and has fastened the liability upon the non-applicant No.3 along with non-applicants No.1 and 2 jointly and severally to pay compensation to the Claimants/non-applicants No. 4 & 5 .

5. As submitted by learned counsel for the parties, no counter appeal has been filed by the Respondents.

6. Learned counsel for the Appellants/Claimants submits that income of the deceased has wrongly been considered by the Tribunal as Rs.3,000/- per month

whereas it should have been Rs.6,000/- per month. He further submits that amount Rs.1,000/- for conveyance; Rs.1,500/- towards special diet; Rs.2,600/- towards attendant and Rs.1,000/- towards pain suffering awarded by the Tribunal is also on the lower side and the same deserves to be enhanced suitably. He also submits that the Tribunal has erred in holding the deceased guilty of negligence to the extent of 50% and thereby in deducting 50% of the amount of compensation awarded by it.

7. On the other hand, learned counsel for Respondents No. 1 to 3 supports the impugned award and submits that there was 50% contributory negligence on the part of the deceased and the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

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

9. First, consider regarding contributory negligence. It is not in dispute that the accident had occurred on 17.10.2010. As per statement of Raju Yadav (AW-1), the deceased was on his motorcycle near Satnam Bhavan, Sector-6, one Santro Car bearing registration No. CG-07 – 3994 was coming from front side which was being driven by non-applicant No.1 in rash and negligent manner, dashed the motorcycle of Ranjeet Das due to which deceased sustained grievous injuries and his back-bone was fractured. AW-1 has not stated that the deceased was ridding his motorcycle in a rash and negligent manner, but he stated that the motorcycle of the deceased was dashed from the right side. The Santro Car 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. The deceased, i.e., motorcyclist wanted to approach Satnam Bhavan, Sector-6, was required to take care of any vehicle coming or running on the road. Therefore, in view of the above evidence, the Tribunal has committed error in holding the deceased guilty of contributory negligence to the extent of 50%. Thus, this Court held the deceased

guilty of contributory negligence to the extent of 25% and non-applicant No.1, driver of the offending vehicle- Santro Car, guilty of contributory negligence to the extent of 75%.

10. Since nothing has been brought on record by the Claimants which could prove that the death of the deceased had any nexus with the injuries suffered by him in the accident in motor vehicular accident occurred on 17.10.2010, the Tribunal on due appreciation the entire oral and documentary evidence led by the parties has recorded a finding against issue No. 2 that death of the deceased was not the result of the injuries sustained by him in the accident. Thus, finds no illegality in the finding so recorded by the Tribunal. Hence, the present case is liable to be treated as injury case and not death case because it has been duly proved by the Claimants through oral as well as documentary evidence that the deceased suffered injuries in the accident occurred on 17.10.2010 due to rash and negligent driving of the offending vehicle by non-applicant No.1.

11. As regards income of the deceased, though the Claimants have pleaded that the deceased was a plumber and was earning Rs.6,000/- per month, however, no evidence in support thereof has been adduced. Therefore, in these circumstances, in absence of any proof regarding actual income, the income of the deceased is considered as Rs.5,000/- per month and as such awarded Rs.15,000/- for three months towards loss of income during treatment. Further, looking to the injury caused to the deceased as his back-bone was fractured; his treatment was going on Sector-9 Hospital, Bhilai; CIMS Hospital, Nagpur and as per Ex.-P/41, Ranjeet Das was hospitalized from 01.11.2010 to 26.11.2010 in Chandulal Chandrakar Memorial Hospital, Bhilai, definitely the family members of the deceased had suffered mental agony during treatment of deceased and after death of the deceased. Therefore, this Court is of the view that the amount Rs.1,000/- awarded by the Tribunal for conveyance is enhanced to Rs.5,000/-; Rs.1,500/- towards special diet is enhanced to Rs.5,000/-; Rs.2,600/- towards attendant is enhanced to Rs.10,000/- and Rs.1,000/- towards pain & suffering is enhanced to Rs.20,000/-.

Thus, the Claimants/Appellants and non-applicants No. 4 & 5 are held entitled for compensation in the following manner:-

Sl.No.	Heads	Calculation (In rupees)
1.	For medical treatment & medical Bills	Rs.1,70,174/- (as awarded by the Tribunal)
2.	Loss of three months income of the deceased @ Rs.5,000/- per month	Rs.15,000/-
3.	For conveyance	Rs.5,000/-
4.	For special diet	Rs.5,000/-
5.	For attendant	Rs.10,000/-
6.	For pain and suffering	Rs.20,000/-
	Total Amount	Rs.2,25,174/-
	After deducting 25% on account of contributory negligence on the part of the deceased from the above total amount	Rs.1,68,880/-
	Total Compensation	Rs.1,68,880/-

12. Since the Tribunal has already awarded Rs.89,637/-, after deducting the same from the above amount, the Claimants/Appellants (parents of deceased) and non-applicants No. 4 & 5 (wife and minor son of deceased) are held entitled for additional compensation of Rs.79,243/- with interest @ 6% per annum from the date of application till its realization. Apportionment of enhanced amount amongst the Claimants/Appellants and non-applicants No. 4 & 5 shall be in the same manner as has been done by the Tribunal. However, rest of the conditions of the impugned award shall remain intact.

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

14. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge