

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 10 of 2015**

1. Smt. Chandani Wd/o Jhitakuram Korram aged about 45 years;
2. Vinay Korram S/o. Late Jhitakuram Korram aged about 25 years;
3. Mukesh Korram S/o. Late Jhitakuram Korram aged about 23 years

All are Residence of Village Jampadar Kondagaon P.S., Tahsil and District- Kondagaon (C.G.).

---- Appellants/Claimants

Versus

1. Sadanand Nayak S/o Parmanand Nayak aged about 32 years R/o. Kukdabai P.S. Nawrangpur P.S. Umarkote District- Nawrangpur (Odisha) (Driver).
2. Smt. Sandhaya Rani Rout W/o Sansadhar Rout W/o Sansadhar Rout R/o. Khatiguda P.S. Nawrangpur P.S. Umarkote District- Nawrangpur (Odisha) (Owner)
3. The Oriental Insurance Company Ltd., Branch Jaipur (Koraput) Main road Jainpur District- Koraput (Odisha).

---- Respondents

For Appellant	: Shri P. Dhurandhar, Advocate
For Respondent No. 3	: Shri Deepak Gupta, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

18.06.2019

01. This appeal is by the claimants against the award dated 30.07.2014, passed by Additional Motor Accident Claims Tribunal, Kondagaon in Claim Case No.17/2012 after deducting 30% towards contributory negligence awarding total compensation of Rs. 6,79,054.00/- with interest @ 7% per annum from the date of application till realization,

fastening liability on the non-applicants/respondents jointly and severely.

02. As per claim petition, on 13.11.2008 deceased Jhitakuram Korram, aged about 55 years, earning Rs.10072.00/- per month as security guard At State Bank of India Branch Kondagaon and getting Rs 3,254/- as pension from the Indian Army was going to his work place on motorcycle bearing registration No. CG 17J/1385, on national highway No. 43, near village Kakdighat Durga mandir non-applicant No. 1-Sadanand Nayak by rash and negligent driving of offending vehicle (truck) bearing No. CG04-G/9300 dash the motorcycle of the deceased as a result of which, Jhitakuram sustained grievous injuries and when he was taken to the hospital, on the way he died. The vehicle is owned by Non applicant No. 2 and insured with non-applicant No. 3.

03. On claim petition being filed by the claimants/wife & children of the deceased- Jhitakuram 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 appellant submits that the learned Tribunal has wrongly considered the 30% contributory negligence on the part of the deceased only on the basis of FIR which is not specifically proved by leading evidence and therefore, the findings of contributory negligence recorded by the Tribunal, on the face, is illegal and deserves to be set aside. He further submits that learned Tribunal wrongly considered multiplier of 7 but as per the judgment rendered by the Supreme Court in the matter of **sarla verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, and looking to the age of deceased i.e. 55 years, 11 would be applicable in place of 7.

05. Learned counsel for the respondent No. 3/Insurance Company

opposes the contention made by learned counsel for the appellants/claimants and submits that regarding contributory negligence as per document FIR (Ex. P/2) accident occurred due to head on collision and, therefore, learned Tribunal has rightly considered contributory negligence on the part of the deceased/driver of the offending vehicle (truck) to the extent of 30 : 70. He also 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 perused the material available on record and the award impugned.

07. Firstly, I consider the case regarding contributory negligence, only on the basis of document FIR (Ex. P/2) contributory negligence has been found on the part of the deceased and except this, no other evidence has been adduced by the respondent/Insurance Company. The chargesheet Ex. P/1 is also filed against the Non-applicant No. 1/driver of the offending vehicle. No any oral & documentary evidence produced before the Tribunal by the Insurance Company regarding contributory negligence. Driver of the offending vehicle namely Sadanand Nayak was not examined before the Claims Tribunal who was the right person to explain the incident, therefore, the deceased was not liable for 30% of contributory negligence and the finding given by the learned Tribunal regarding 30% contributory negligence on the part of the deceased is liable to be and is hereby set aside.

08. With regard to assessment of the income of the deceased, the Tribunal in para 11 of the impugned award has observed that as per

evidence of AW-1 Smt. Chandni Bai Korram the deceased was working as security guard in the State Bank of India branch Kondagaon and earning Rs. 10072/- per month, the said evidence stand corroborated by the evidence of AW-2 -Shyam Vallabh Agrawal Branch Manager of State Bank of India, Kondagaon. Though the deceased was also got Rs. 3254/- as pension vide Ex. P/8, however his wife AW-1 Smt. Chandni Bai Korram has admitted this fact in para 8 of her deposition that even after death of her husband she is getting Rs. 3,000/- as pension therefore, the Tribunal considered the loss of monthly income @ Rs. 11583/- per month and further in view of the decision of **Hon'ble Supreme Court in Rajesh & Other. Vs. Rajveer Singh & Others (2013) 9 SCC 54** awarded 15% towards future prospect and thus considered his monthly income Rs. 11583/- per months this court finds no illegality so recorded by the Tribunal. So far as the multiplier is concerned, looking to the fact that at the time of accident the age of the deceased was 55 years therefore, 11 in place of 7 would be applicable in the light of the decisions of Hon'ble Supreme Court in **Sarla Verma, (supra)**, I propose to recompute the amount of compensation as under:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant after considered 15% towards future prospect @ Rs11583/- per month. (as awarded by the Tribunal)	Rs. 138,996/- per annum
02.	After 1/3rd deduction towards personal and living expenses of the deceased (as deducted by the Tribunal)	Rs. 138996-46332= Rs.= 92664
03.	Multiplier of 11 to be applied	Rs. 92664x 11=

		Rs.1019304/-
04.	Towards conventional heads (consortium, care of children & guidance {parental consortium} and funeral expenses)	Rs.1,00000+ 100000+25000= Rs. 2,25,000/-
05	Total	Rs.12,44,304/-

Since the Tribunal has already awarded Rs.6,79,054/- (total award amount after deducting 30% contributory negligent), after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.5,65250/- along with interest as awarded by the Tribunal.

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

Sd/-

(Gautam Chourdiya)
Judge

Amita