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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 93 of 2015**

1. Smt. Chandrababha W/o Late Shri Dr. Yashwant Markam, aged about 26 years, Caste- Gond,
2. M. R. Markam, S/o Late Shri Mansingh Markam, aged about 55 years,
3. Smt. Neela Bai, W/o Shri M.R. Makam, aged about 45 years,

All R/o Vill- Chimpawand, at present- Civil Line Kondagaon, Police Station- Civil Line, Civil & Revenue District- Kondagaon (C.G.).

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

1. Dashmu Ram Korram, S/o Shri Bodaram Korram, aged about 35 years, R/o- Bandhapara, Kondagaon, Civil & Revenue District- Kondagaon (C.G.) (Driver of the offending Vehicle Tata 407 No. CG.07/ZB/1629) (Appeal is treated as dismissed against respondent No. 1 for non-compliance of Hon'ble Court's order dated 23.02.2016)
2. Ramakant Singh S/o Shri Rajaram Singh, aged about 42 years, R/o- Hospital Ward, Kondagaon, Police Station- Civil Line, Civil & Revenue District- Kondagaon (C.G.)(Owner of the offending Vehicle Tata 407 No. C.G.07/ZB/1629).
3. The Oriental Insurance Company Ltd., Through- The Branch Manager, Branch Office Jagdalpur, Civil & Revenue District Jagdalpur (C.G.) (Insurer of the offending vehicle Tata 407 No. C.G.07/ZB/1629).

---- Respondents

For Appellant	: Shri Paras Mani Shriwas, Advocate
For Respondent No 2.	: Shri Praveen Dhurandhar, Advocate
For Respondent No. 3	: Shri R. N. Pusty, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

11.03.2019

- (1) This is claimants' appeal for enhancement of compensation

awarded by the Additional Motor Accident Claims Tribunal, Kondagaon, District Kondagaon (for short 'the Tribunal') in claim case No. 34/2012 vide award dated 01.12.2014.

(2) As against compensation of Rs. 85,10,000/- claimed by unfortunate widow and parents of deceased Dr. Yashwant Markam by filing claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the MV Act') for his death in the motor accident on 28.08.2009; the Tribunal assessed a total sum of Rs. 27,85,000/- and after deducting contributory negligence towards 50% awarded Rs. 13,92,500/- along with interest @ 7 % per annum from the date of application till its actual payment.

(3) The Tribunal, on a close scrutiny of the evidence led, held : the accident had occurred due to collision between offending vehicle Tata 407 bearing registration No. CG-07-ZB/1629 being driven by Dashmu Ram Korram /Non-applicant No. 1 and motorcycle being driven by deceased Dr. Yashwant Markam; both equally contributed to the cause of accident to the extent of 50:50; Dr. Yashwant Markam died on account of injuries sustained by him in the said accident; respondent No. 3/Insurance Company is liable for payment of compensation to the claimants as it could not establish violation of policy conditions; after deducting 50 percent of it towards contributory negligence of deceased Dr. Yashwant Markam, awarded aforesaid sum as compensation to the claimants.

(4) Facts of the case leading to filing of the claim petition are that when on 28.08.2009 at about 7.30 pm, deceased-Dr. Yashwant Markam was riding Bajaj Discover motorcycle and his wife Smt. Chandraprabha

and and their neighbor's child(girl) were sitting in the said motor cycle as pillion rider, respondent No. 1 while driving the offending vehicle Tata 407 bearing registration No. CG-07 ZB 1629, dashed the motorcycle of Dr. Yashwant Markam, as a result of which he sustained grievous injuries and died on the spot.

(5) Learned counsel for the appellant submits that the learned Tribunal has wrongly considered the 50% contributory negligence on the part of the deceased only on the basis of spot map vide EX. P/5 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. Learned Tribunal has also overlooked the evidence adduced by the claimant- Smt. Chandraprabha, which is uncontroverted before the Claims Tribunal. He further submits that no future prospect was awarded to the claimant as per the judgment rendered by the Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, and looking to the age of deceased i.e. 31 years, 40% future prospect should be added to the income of the deceased. He also submits that amount of compensation awarded on the other heads are also appears to be lower side, which deserves to be enhanced suitably.

(6) Learned Counsel for the respondent No. 2/owner while supporting the award impugned submits that there is no need to be interfered with in the impugned award.

(7) Learned counsel for the respondent No. 3/Insurance Company opposes the contention made by learned counsel for the

appellants/claimants and submits that in the instant case, the income of the deceased was of Rs.15,000/- per month as per Salary Pay Slip (Ex.P-54) by working as contractual basis employee. He further submits that the learned Claims Tribunal has already considered the monthly income of the deceased as Rs. 20,000/-, which appears to be higherside and there is no need to be interfered with in this regard. He also submits that regarding contributory negligence as per document (Ex. P/5) accident occurred on the middle of the road and, therefore, learned Tribunal has rightly considered contributory negligence on the part of the deceased/driver to the extent of 50 : 50. He further submits that on the conventional heads amount awarded to the claimants are also on the higher side which is suitably reduced as per judgment of the Supreme Court in the matter of ***Pranay Sethi (supra)***.

(8) Heard perused the material available on record and the award impugned.

(9) Firstly, I consider the case regarding contributory negligence, no contributory negligence has been found on the part of the deceased as per document (Ex. P/5) and except this no other evidence has been adduced by the respondent/Insurance Company. Claimant No. 1 - Smt. Chandraprabha, has specifically stated in paragraphs 2 & 3 of her statement that the deceased was riding the motorcycle from the opposite side of the road and respondent No.1 while driving the offending vehicle rashly and negligently dashed the motorcycle of deceased, as a result thereof he sustained multiple injuries and died on the spot itself; and this statement was uncontroverted before the Tribunal. Driver of the offending

vehicle namely Dashmu Ram Korram was not examined before the Claims Tribunal who was the right person to explain the incident, so the statement of Smt. Chandraprabha cannot be discarded therefore, the deceased was not liable for 50% of contributory negligence and the finding given by the learned Tribunal regarding 50% contributory negligence on the part of the deceased is liable to be and is hereby set aside.

(10) Sofar as the income of the deceased is concerned, as per Salary Slip (Ex.P-54), the deceased was earning Rs.15,000/- per month by working on contract basis, hence, his income is considered as Rs. 15,000/- as per document and evidence adduced by the claimant before the Tribunal. So far as the future prospect is concerned, looking to the fact that at the time of accident the age of the deceased was 30 years, one month, 18days, and his D.O. B. i.e. 10.07.1979 (as per driving licence) therefore, 40% future prospect should be added to the income of the deceased. Further looking to the job and dependency, in the light of the decisions of Hon'ble Supreme Court in *Sarla Verma, Pranay Sethi*, (supra), I propose to recompute the amount of compensation as under:

Sl. No.	Heads	Calculation (in rupees)
01.	Income of the claimant @ Rs.15,000/- per month.	1,80,000/- per annum
02.	40% towards future prospect	1,80,000 + 72,000/- = Rs.2,52, 000/-
03.	1/3rd deduction towards personal and living expenses of the deceased (as deducted by the Tribunal)	Rs. 1,68000/-

04.	Multiplier of 16 to be applied	Rs. 1,68,000x 16= Rs.26,88,000/-
05.	Towards conventional heads	Rs.70,000/-
	Total	Rs.27,58,000/-

Since the Tribunal has already awarded Rs.13,92,500/- (total award amount), after deducting the same from the above amount, the claimants are held entitled for additional compensation of **Rs.13,65,500/-** along with interest as awarded by the Tribunal.

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

Sd/-

(Gautam Chourdiya)
Judge

Amita