

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1180 of 2015

1. Smt. Budhiyarin Bai Wd/o Leelaram Jangde, aged about 34 years
2. Tilak Ram S/o Leelaram, aged about 17 years
3. Ku. Toran D/o Leelaram, aged about 15 years
4. Ku. Saraswati D/o Leelaram, aged about 13 years
5. Ku. Santoshi D/o Leelaram, aged about 11 years
6. Shiva S/o Leelaram, aged about 9 years

Appellant no. 2 to 6 minor through their natural guardian mother namely Smt. Budhiyarin Bai Wd/o Leelaram Jangde, aged about 35 years

All are R/o Udiyakala, Police Station and Tahsil- Sahaspur Lohara, Civil and Revenue District- Kabirdham (C.G.)

---- Appellants/Claimants

Versus

1. Dinesh Prasad Sharma S/o Brijlal Sharma, aged about 44 years, R/o House No. 179, Street No. 13, Shanti Nagar, Bhilai, Police Station- Supela, District- Durg (C.G.), Present Address- Professor Colony, Kawardha, Police Station and Tahsil- Kawardha, District Kabirdham (C.G.) (Driver and owner of the offending vehicle Alto Car No. CG/7/7991)
2. The Branch Manager, The Oriental Insurance Company Ltd, Sunil Video World, Bhagwan Mahavir Swami Chowk, Main Market, Kawardha, District Kabirdham (C.G.) (Insurer of the offending vehicle Alto Car No. CG/7/7991)

---- Respondents

For Appellants	:	Shri Dharmesh Shrivastava, Advocate
For Respondent 1	:	None
For Respondent No.2/ Insurance Company	:	Shri N.K. Malviya, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

09.05.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the Claimants/Appellants, seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Kabirdham (Kawardha) Chhattisgarh vide award dated 12.08.2015 passed in Claim Case No. 177 of 2014.
2. The Claimants/Appellants, unfortunate wife and minor children of deceased Leelaram Jangde aged about 35 years, claimed compensation of Rs.64,90,000/- by

filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 for death of Leelaram Jangde in the motor accident.

3. Facts of the case, in brief, are that on the date of accident i.e. 17.08.2014, deceased Leelaram was going to Odiyakala from Kawardha by motorcycle Discover bearing registration No. CG-07/J/3938, when he reached near Khairbanakala turn, one offending vehicle Alto Car bearing registration No. CG-07 - 7991 which was being driven by non-applicant No.1 and was insured with non-applicant No.2, in a rash and negligent manner, dashed the motorcycle of Leelaram. As a result thereof, Leelaram sustained grievous injuries over his body and died on spot.

4. Non-applicant No.1/Respondent No.1 is driver & registered owner of the offending vehicle which was insured with non-applicant No.2.

5. The learned Tribunal, in the impugned award, has assessed total compensation of Rs.4,34,000/-, However, holding the deceased contributory negligent to the extent of 50%, the Tribunal has awarded a total compensation of Rs.2,17,000/- in favour of the Claimants/Appellants with interest @ 7% per annum from the date of application till its realization. The Tribunal has also directed that the Respondents/non-applicants are jointly and severally liable for payment of compensation to the Claimants/Appellants.

6. Contention of the learned counsel for the Claimants/Appellants is that the Tribunal has illegally deducted 50% on account of contributory negligence on the part of the deceased whereas the Insurance Company has failed to prove the contributory negligence of the deceased by producing any document or adducing oral evidence. He also submits that the deceased was a truck driver aged about 35 years and was earning Rs.7,400/- per month, but income of the deceased was wrongly been considered by the Tribunal as Rs.3,000/-. He further submits that there are six dependent of the deceased, but the Tribunal has wrongly deducted 1/3rd towards personal & living expenses of the deceased. He also submits that no

amount towards future prospect has been granted to the Claimants and the amount awarded under the conventional heads also being on the lower side deserves to be enhanced suitably. In support of above contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of ***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***.

7. Learned counsel for Respondent No.2/Insurance Company, however, opposes the appeal and submits that the amount of compensation awarded by the Tribunal for death of deceased is not on the lower side. About 50% contributory negligence on the part of the deceased, he submits that the accident occurred due to rash and negligent driving of the motorcycle by the deceased. Therefore, the compensation awarded by the Tribunal is just and reasonable and does not call for any interference in the instant appeal.

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

9. So far as argument relating to contributory negligence is concerned, the Tribunal after hearing the parties and recording the evidence held that the accident was caused due to rash and negligent driving of the Alto Car driver/Respondent No.1. However, the Tribunal considering the pleading of the Claimants/Appellants as to the manner in which the accident occurred being head-on collision in the middle of the road, has recorded the finding that the deceased was also responsible for the accident and thus held him contributory negligent to the extent of 50%.

10. It is not in dispute that the accident occurred on 17.08.2014, the deceased was on the motorcycle near Khairbanakal turn and non-applicant No.1/Respondent No.1 was driving the offending vehicle in a rash and negligent manner. As per Ex.-A/2-FIR and other documents as well as charge-sheet (Ex.-A/1), it is seen that offence under Section 304 (A) of IPC was registered against non-applicant

No.1/Respondent No.1 by the police. FIR goes to show that it is non-applicant No.1 who was driving the offending vehicle in a rash and negligent manner which resulted in unfortunate accident due to which deceased died. Therefore, the Claimants have proved that the accident occurred due to rash and negligent driving of the offending vehicle by non-applicant No.1/Respondent No.1. Dinesh Prasad Sharma, non-applicant No.1, examined before the Tribunal as NAW-1. In para-3, NAW-1 has stated that the rider of the motorcycle himself dashed the bridge and due to which he died and in para-6, he stated that his Alto Car got dashed against a tree to save the motorcyclist. This fact is contrary to charge-sheet (Ex.-A/1) and F.I.R. (Ex.-A/2) against non-applicant No.1. No counter F.I.R. was lodged by non-applicant No.1 and no contrary evidence has been adduced by the Insurance Company/non-applicant No.2 to substantiate its plea that the deceased was responsible for accident in any manner. Only on the basis of head-on collision between the motorcycle and the offending vehicle i.e. Alto Car, it would not be justifiable to hold the deceased responsible for the accident to any extent. The finding of the Tribunal regarding contributory negligence of the deceased appears to be based on mere presumption and surmises. Therefore, considering overall facts and circumstances of the case and the nature and quality of evidence adduced by the parties, this Court is of the view that the Tribunal was not justified in holding the deceased contributory negligent to the extent of 50% and accordingly it is held that the accident occurred due to negligence on the part of non-applicant No.1/Respondent No.1 only.

11. As regard income of the deceased, the Claimants have pleaded that the deceased was earning Rs.7,400/- per month as truck driver 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.5,500/- per month as per minimum wages at the relevant time. Further, considering the age of the deceased i.e. 35 years, the dependency i.e.

there are six dependant of the deceased, the nature of his job and the decisions of the Hon'ble Supreme Court in *Smt. Sarla Verma and Pranay Sethi* (supra), the Claimants are held entitled for compensation in the following manner:

Sl.No.	Heads	Calculation (In rupees)
1.	Income of the deceased @ Rs.5,500/- per month	Rs.66,000/- per annum
2.	40% towards future prospects added to annual income	(Rs.66,000/- + Rs.26,400/-) Rs.92,400/-
3.	1/4th deduction towards personal and living expenses of Deceased	(Rs.92,400/- – Rs.23,100/-) Rs.69,300/-
4.	Multiplier of 16 applied	Rs.69,300/- x 16 = Rs.11,08,800/-
5.	Conventional heads:- Towards loss of consortium; loss of estate and funeral expenses	Rs.70,000/-
	Total Compensation	Rs.11,78,800/-

Since the Tribunal has already awarded Rs.2,17,000/-, after deducting the same from the above amount, the Claimants/Appellants are held entitled for additional compensation of Rs.9,61,800/- with interest @ 7% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

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

13. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge