**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**
**M. A. (C) No. 786 of 2015**

Shriram General Insurance Company Limited, Divisional Office 4th Floor, Maruti Heights, Mohaba Bazar, G.E. Road, Raipur, Chhattisgarh **(Insurer).**

**---- Appellant**

**Versus**

1. Neelkanth Dhruw, Son of Prithram Dhruw, Aged About 44 Years,
2. Smt. Kumari Bai W/o Neelkanth Dhruw, Aged About 40 Years,
3. Mahesh Kumar Dhruw S/o Neelkanth Dhruw, Aged About 18 Years,
   All are resident of Village Thakuripali, Post Office Tendukona, Thana Bagbahara, District : Mahasamund, Chhattisgarh **(Claimants).**
4. Vishal Thakur S/o Maniram Thakur, Aged About 35 Years, Occupation Driver R/o Basula Dabri, Thana Bagbahara, District- Mahasamund, Chhattisgarh **(Driver).**
5. Shekharlal Chandrakar S/o Himmatlal Chandrakar, Occupation Registered Owner Truck No.C.G.-04-J/7217, R/o Old Thanapara, Bagbahara, Tahsil Bagbahara, District- Mahasamund, Chhattisgarh **(Owner).**

**---- Respondents**

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| For Appellant | : | Shri Sachin Singh Rajput, Advocate |
| For Respondents No.1 to 3 | : | Shri J. A. Lohani, Advocate |
| For Respondent No.4 | : | Shri Sunil Sahu, Advocate |
| For Respondent No. 5 | : | None |

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**Hon'ble Shri Justice Parth Prateem Sahu**

**Judgment On Board**

**27.10.2020**

1. Appellant/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 26.03.2015 passed by the Motor Accident Claims Tribunal Mahasamund, Chhattisgarh (hereinafter referred to as

'Claims Tribunal') in Claim Case No.H-101 of 2014 whereby learned Claims Tribunal allowed the claim application filed under Section 166 of the M.V. Act in part, awarded Rs.7,84,000/- as compensation in a death case and fastened liability upon the Insurance Company.

2. Facts of the case in nutshell, are that, on 24.04.2014, at about 2.00 PM, Digeshwar along with his other friends was travelling on a motorcycle bearing No.CG-06/C/1289 and returning to his village Thakuripali from village Batora. On the way, one Truck bearing No.CG-04/J/7217 (hereinafter referred to as 'offending vehicle') coming from Bagbahara and going towards Khariyar Road, dashed the motorcycle of Digeshwar and caused accident. In the aforementioned accident, Digeshwar and other two persons died.

3. Claimants, who are parents and younger brother of deceased Digeshwar filed claim application under Section 166 of the M.V. Act before the learned Claims Tribunal seeking compensation of Rs.26,60,000/- pleading therein that on the date of accident, deceased was aged about 21 years, able-bodied person and earning Rs.3,000/- per month from his occupation of Mason.

4. Non-applicants No.1 and 2/driver and owner of offending vehicle submitted reply to claim application denying the fact of accident from offending vehicle. It was pleaded that driver

of motorcycle fell down as motorcycle slipped on the road; offending vehicle was being driven by non-applicant No.1, who was possessing valid and effective driving licence. On the date of accident, offending vehicle was insured with non-applicant No.3/Insurance Company, as such, liability, if any, would be upon the Insurance Company to satisfy the amount of compensation.

5. Non-applicant No.3/Insurance Company submitted reply to claim application denying the pleadings made in claim application, pleaded that on the date of accident, four persons were travelling on motorcycle and deceased himself was negligent for accidental injuries suffered by him. There was contributory negligence on the part of deceased as well; non-applicant No.1 was not possessing valid and effective driving licence, there was no valid permit and fitness of offending vehicle, hence, there was breach of policy conditions.

6. On appreciation of pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that non-applicant No.1 while driving the offending vehicle rashly and negligently, caused accident resulting in death of Digeshwar; contributory negligence was not found to be proved, awarded Rs.7,84,000/- as compensation and fastened liability upon non-applicant No.3/Insurance Company for satisfying the amount of compensation.

7. Shri Sachin Singh Rajput, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal has erroneously recorded a finding that contributory negligence on the part of deceased was not found to be proved. Admittedly, at the time of accident, four persons were travelling on the motorcycle including the deceased as driver of motorcycle. It is contended that permitted seating capacity of motorcycle is only 'Two'. Travelling more than the seating capacity on motorcycle itself shows the negligence on the part of deceased. There was head on collision between two motor vehicles i.e. motorcycle and offending vehicle, therefore, learned Claims Tribunal ought to have held the deceased to be contributory negligent in the accident to some extent. It is further contended that learned Claims Tribunal erred in awarding Rs.2,25,000/- towards other conventional heads, which is contrary to the law laid down by Hon'ble Supreme Court in case of **National Insurance Co. Ltd. v. Pranay Sethi** reported in **(2017) 16 SCC 680**. He lastly argued that learned Claims Tribunal erred in awarding conditional interest, there is no provision as such under the M.V. Act of awarding conditional interest/default interest.

8. Per contra, Shri J.A. Lohani, learned counsel for respondents No.1 to 3/claimants submits that Insurance Company has not led any evidence to prove contributory

negligence on the part of deceased. Merely travelling more than the seating capacity on motorcycle will itself not lead to contributory negligence on the part of deceased driver of motorcycle, but he can only be fined in the Motor Vehicles Act, 1988. It is contended that looking to the spot-map (Ex.P/3) placed on record would show that accident took place down the road on left side of motorcycle and offending vehicle dashed the motorcycle driven by deceased while coming to extreme right to driver of offending vehicle, which itself shows that there is sole negligence on the part of driver of offending vehicle. He places reliance on the judgment passed by Hon'ble Supreme Court in case of **Mohammed Siddique and Another v. National Insurance Company Limited and Others** reported in **(2020) 3 SCC 57** to buttress his contention. He lastly argued that learned Claims Tribunal has awarded just amount of compensation in the facts and circumstances of the case, which does not call for any interference.

9. Shri Sunil Sahu, learned counsel for respondent No.4/driver of offending vehicle supported the impugned award.

10. I have heard learned counsel for the respective parties and perused the record carefully.

11. To appreciate the submission made by learned counsel for the appellant with regard to contributory negligence, upon

going through the Crime Detail Form (Ex.P/3), in which, Investigating Agency/Police has prepared spot-map, in which, it is shown that place of accident as 'A' on left side of motorcycle down the road. First Information Report (Ex.P/2) lodged immediately within one hour of the accident mentions that offending vehicle was coming from Bagbahara and going towards Khariyar Road. Upon going through the spot-map (Ex.P/3), direction of Bagbahara and Khariyar Road has been mentioned, place of accident shown in spot-map is extreme right of the driver of offending vehicle and down the road. Non-applicants No.1 to 3/driver, owner and insurer of offending vehicle have not led any evidence before learned Claims Tribunal to prove the pleading of contributory negligence on the part of deceased. The order-sheets of learned Claims Tribunal would show that non-applicants therein have declared their right of leading evidence closed on 23.03.2015. True it is, mainly spot-map cannot be taken as an evidence to arrive at a conclusion of negligence on the part of driver of the two motor vehicles, but in the facts of the case where learned counsel for the appellant has raised ground of contributory negligence on the part of deceased driver of the motorcycle only on the ground that at the time of accident, four persons were travelling on the motorcycle, spot-map (Ex.P/3) has some significance to the accident. Place of accident has been shown to be extreme right of driver of the offending vehicle and not on the middle of the road. The driver and owner of offending vehicle have not entered into the witness box to dispute the spot-map prepared by the Police and have not led any evidence that except travelling of four persons on the motorcycle, there is something more like imbalancing or deviation of motorcycle from its road to say that deceased was contributory negligent. Insurance Company has not made any attempt to lead any evidence by calling driver of offending vehicle. In absence of any evidence, in the facts of the present case, no inference can be drawn of negligence on the part of deceased driver of motorcycle.

12. The Hon'ble Supreme Court in case of **Mohammed Siddique** (supra) has considered the issue of carrying more passengers than the seating capacity and held thus :

> “12. But the above reason, in our view, is flawed. *The fact that the deceased was riding on a motorcycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence.* At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motorcycle, not to carry more than one person on the motorcycle. Section 194-C inserted by the Amendment Act 32 of 2019,

prescribes a penalty for violation of safety measures for motorcycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motorcycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. *There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim.* It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. *It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked*. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motorcycle. It is not

> even the case of the insurer that the accident would have been averted, if three persons were not riding on the motorcycle. The fact that the motorcycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motorcycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motorcycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW 3 to the effect that 2 persons on the pillion added to the imbalance.
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> 13. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributed either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence, the reduction of 10% towards contributory negligence, is clearly unjustified and the same has to be set aside."

13. In view of aforementioned ruling of Hon'ble Supreme Court and further taking into consideration the facts and circumstances of the case, submission made by learned

counsel for the appellant with regard to contributory negligence is not sustainable and it is hereby repelled.

14. So far as second submission made by learned counsel for the appellant with regard to award of Rs.2,25,000/- towards other conventional heads is concerned, Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130** has clearly held the heads under which the amount of compensation is to be awarded towards other conventional heads and quantum of compensation on those heads have also been fixed.

15. In view of law laid down by Hon'ble Supreme Court, the amount of compensation of Rs.2,25,000/- awarded by learned Claims Tribunal on other conventional heads is on higher side. The M.V. Act is a beneficial piece of legislation. It is the duty of the Tribunal or the Court to see that the claimants or injured or legal representatives of the deceased, who lost their bread winner should be awarded just amount of compensation.

16. To appreciate the submission made by learned counsel for the appellant with regard to excessive amount of compensation on other conventional heads requires consideration, hence to award just amount of compensation,

impugned award requires re-consideration and re-computation, which is as under :

The monthly income of the deceased is taken as Rs.4,500/- per month and Rs.54,000/- per annum as assessed by learned Claims Tribunal. On the date of accident, deceased Digeshwar was shown to be 21 years of age i.e. less than 40 years, hence, in view of law laid down by Hon'ble Supreme Court in **Pranay Sethi** (supra), there will be an addition of 40% of the income towards future prospects. By adding 40% of the income towards future prospects, makes the total annual income of deceased to Rs.75,600/- (54,000 x 40% = 21,600 and 54,000 + 21,600). On the date of accident, the deceased was a bachelor, hence there will be a deduction of 50% towards personal and living expenses, which makes the yearly loss of dependency as Rs.37,800/- (75,600 / 2). Learned Claims Tribunal has taken the age of deceased to be 21 years and in the age group of 20-25 years, appropriate multiplier would be 18 in view of law laid down by Hon'ble Supreme Court in **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121.** By applying multiplier of 18, amount of compensation towards loss of dependency will come to Rs.6,80,400/- (37,800 x 18). Apart from above amount of compensation towards loss of dependency, claimants will be further entitled for a sum of

Rs.40,000/- towards filial consortium to the parents (payable to the parents because of the death of son), Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The award of default interest/conditional interest at the rate of 9% per annum is set aside being not sustainable in the eye of law.

17. Now, the claimants are entitled for total compensation of Rs.7,50,400/- (6,80,400 + 40,000 + 15,000 + 15,000) instead of Rs.7,84,000/- as awarded by learned Claims Tribunal. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization.

18. In the result, the appeal is allowed in part and impugned award is modified to the extent indicated herein-above.

Sd/-

**(Parth Prateem Sahu)**
**Judge**

Yogesh