

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1435 of 2015

1. Shri Shankar Bramahankar S/o Pandu Bramahankar, aged about 42 years
2. Smt. Nirmala Bramahankar W/o Shri Shankar Bramahankar, aged about 40 years
Both R/o Vijay Nagar, Avanti Bihar, Raipur, Post Office, Raipur, Police Station-Telibandha, District Raipur C.G.

----Appellants/claimants

VERSUS

1. Shaif Aalam S/o Mohd Akil, aged about 31 years, R/o Quarter No. 3, Chal No. 33, Tansit Camp, Tank Pakhadi Road By Kala, West Mumbai Maharashtra, Present R/o Bhanpuri, Raipur, Post Office, Raipur, Police Station-Khamtarai, Raipur District Raipur C.G. **-----Driver**
2. Majinder Singh, S/o Karnal Singh, R/o Bhanpuri, Raipur, Post Office, Raipur Police Station Khamtarai, Raipur C.G. **-----Owner**
3. The I.C.I.C.I. Lombard General Insurance Company Limited, through the Branch Manager Branch Office, Devendra Nagar, Post Office Raipur C.G.

-----Respondents/Non-applicants

For Appellants	:	Mr. Shivendu Pandya, Advocate
For respondent No. 3	:	Mr. Amrito Das, Advocate with Mr. K.Rohan, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgement on Board

20/02/2020

1. Correctness and sustainability of the impugned award dated 12-05-2015 passed in claim case No. 44/2012 by the learned Chief Motor Accident Claim Tribunal, Raipur is put to challenge wherein the learned Claims Tribunal allowed the claim application in part and awarded a total sum of Rs. 4,17,500/- along with interest @ 6% p.a. from the date of filing of claim application after deducting 50% of the calculated amount of award towards contributory negligence.

2. Facts of the case in brief are that on 14-05-2012, at about 7:30 AM, Bhavesh Bramahankar (now deceased) was traveling on his motor cycle bearing registration No. CG04 CM 4100 and going from Urla to Raipur. At that relevant time, one trailer bearing registration No. CG04 E 5125 (hereinafter referred to as "offending truck") driven by respondent No. 1/Non-applicant No. 1 driver turned the truck towards petrol pump situated on the road side and in that, deceased dashed with the offending truck and sustained grievous injuries over his person. Injured was admitted to Balaji Hospital, Raipur from where he was referred to Ambedkar Hospital, Raipur. During the course of treatment, he succumbed to accidental injuries on 27-05-2012. The accident was reported to concerned police station based on which, a crime was registered against respondent No. 1/ non-applicant No. 1- driver of the offending truck.
3. Appellants-claimants who are parents of the deceased filed claim application before the claims Tribunal on account of accidental death of their son who was 24 years old at the time of accident. They have pleaded that deceased was earning Rs. 500 per day by way of selling eggs and chicken to different shop owners and claimed a total sum of Rs. 37,50,000/- as compensation.
4. Respondent No. 1 & 2/ non-applicants No. 1 & 2, driver and owner of the offending truck did not appear before the Claims Tribunal even after service of notice and they were proceeded *ex parte*.
5. Respondent No. 3/ non-applicant No. 3 Insurance company submitted reply to the claim application and denied all the adverse pleadings made in the claim application and further pleaded that at the time of accident, offending truck was being driven in violation of conditions of insurance policy as on the date of accident, respondent No. 1/ non-applicant No. 1 driver was not possessing valid and effective driving licence, there was no valid permit and fitness certificate of the offending truck. They have also taken plea of contributory negligence on the part

of the deceased as well, mentioning therein that the deceased hit the truck from its back side as the offending truck was standing on the red signal.

6. On appreciation of the pleadings and evidence produced by the respective parties, the learned Tribunal held that death of deceased Bhavesh was due to accidental injuries suffered by him in a motor accident between the motor cycle and offending truck. The Tribunal also arrived at a finding that there was contributory negligence on the part of the deceased and after holding the income of the deceased as Rs. 10,000/- per month, awarded total compensation of Rs. 4,17,500/-
7. Mr. Shivendu Pandya, the learned counsel for the appellants submits that the Claims Tribunal committed error in holding the deceased to be contributory negligent in the accident as there is no evidence in this regard. He further pointed that the learned Claims Tribunal erred in awarding meagre amount of compensation and not applied correct multiplier considering the age of the deceased as 24 years, instead of that, the Claims Tribunal applied multiplier of 10 considering the age of the parents of the deceased. It is also contended that the learned Claims Tribunal has not awarded any amount towards future prospects and submits that the amount of award may be suitably enhanced.
8. Per contra Mr. Amrito Das, the learned counsel for respondent No. 3 submits that the learned Claims Tribunal, after taking into consideration the entire facts and circumstances of the case, has awarded just and reasonable amount of compensation which do not call for any interference. He further contended that the learned Claims Tribunal while arriving at finding of contributory negligence has taken note of the manner in which the accident took place. Finding arrived by the Claims Tribunal to that extent also do not call for any interference.
9. I have heard learned counsel on both the sides and also perused the record.
10. So far as the first ground raised by the learned counsel for the appellants that learned Claims Tribunal committed error in arriving at a finding of contributory

negligence of the deceased, perusal of the F.I.R. (Exh. P-2) which was lodged on the basis of mere enquiry would show that respondent No. 1/non-applicant No. 1 driver of the offending truck suddenly turned the truck without glowing the indicator and also applied the brake whereas at that relevant time, deceased dashed with the truck and suffered grievous injuries over his person. In final report, similar facts have been recorded by the investigating agency to prove the cause of accident.

11. The appellants-claimants have examined AW-2 Moreshwar Bhandarkar, who at the time of accident was going to poultry farm, Labhandi for purchasing chicken. At the time of accident, deceased was traveling on his motor cycle ahead of him. This witness has specifically stated in affidavit under Order 18 Rule 4 of CPC that the respondent No. 1/ non-applicant No. 1- driver of the offending truck at about 7:45 AM suddenly turned the truck without glowing indicator, due to which deceased dashed with the truck and suffered grievous injuries. This witness was examined by the learned counsel appearing for respondent No. 3-Insurance Company extensively. In paragraph 5 of his cross-examination, this witness has stated that the offending truck and the motor cycle were going to the same direction when AW-2 saw the deceased was traveling behind the offending truck and was about 15 ft. behind the truck. This witness even denied the suggestion given to him that at the time of accident, the offending truck was standing at the signal crossing. The appellants-claimants have submitted spot map in which at the place of accident, petrol pump has been shown on the left side of the road and it is also shown that the offending truck was turning on left side.
12. The evidence and other materials available on record would show that the accident took place when the truck was suddenly turning on its left side towards petrol pump. The driver of the offending truck who could be the best witness to make submission with regard to the fact and manner of accident to prove the contributory negligence of the deceased, did not chose to appear before the Tribunal.

13. The learned Tribunal apart from the evidence as discussed above has not considered any other evidence for arriving at the finding of contributory negligence. The fact of contributory negligence is required to be proved by placing cogent and reliable piece of evidence by the parties asserting it. In the case at hand, respondent No. 1 & 2/ non-applicant No. 1 & 2 driver and owner of the offending truck had not contested the claim case even they have chosen not to appear and submit reply before the Claims Tribunal. Respondent No. 3/ non-applicant No. 3- Insurance Company except cross examining the witness of claimants i.e. AW-2, not produced any other independent witness to prove contributory negligence on the part of the deceased.
14. Supreme Court has dealt with the issue with regard to contributory negligence in the matter of **Minu Rout and another v. Satya Pradyumna Mohapatra and others** reported in **(2013) 10 SCC 695** and held thus:

“17. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge-sheet, Ext. 1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. The Tribunal ought to have seen that non-production of FIR has no consequence for the reason that charge-sheet was filed against the truck driver for the offences punishable under section 179 read with Section 302 IPC read with the provisions of the MV Act. The Insurance Company, though claimed permission under Section 170(b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eyewitness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet, Ext. 1 which the deceased driver was mentioned as an accused and on his death his name was deleted from the charge-sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW 2 and PW 3 in their

cross-examination and placed reliance on them to record the finding on Issue 1.”

Another judgment of Hon'ble Supreme Court in the matter of **Jiju Kuruvila and others v. Kunjamma Mohan and others** reported in **(2013) 9 SCC 166**, the Hon'ble Supreme Court further held that the position of the vehicles may also not sufficient to prove the contributory negligence on the part of the deceased and held thus:

“20.5 The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

15. The Claims Tribunal only considered that the non-applicants' evidence is with respect to the self driving of motor cycle and it was not rebutted. Learned Tribunal lost sight of the fact that the deceased was traveling on his motor cycle, the truck was shown turning and the applicants' witness was also stated that the deceased was 10-15 ft behind the truck and turned towards it left side to petrol pump suddenly and also applied its brake which was the cause of accident. The non-applicants have not examined single witness to prove that there was negligence on the part of the deceased, he was having opportunity to avoid accident in any manner.
16. In view of the facts and evidence available on record and also in the light of the ruling rendered by the Hon'ble Supreme Court, I have no hesitation in holding that the finding of contributory negligence recorded by the learned Claims Tribunal is without evidence. The finding recorded by the Claims Tribunal with respect to the

contributory negligence on the part of the deceased to the extent of 50% is hereby set aside.

17. So far as the other submissions made by the learned counsel for the appellants that the learned Tribunal has awarded meagre amount of compensation and applied multiplier of 10 is concerned. Age of the deceased has been pleaded as 24 years and in post-mortem report the age of the deceased was also mentioned as 24 years. The learned Claims Tribunal has taken note of the judgment passed by Hon'ble Supreme Court in the matter of **Municipal Corporation of Greater Bombay v. Laxman Iyer** reported in **(2003) 8 SCC 731** and applied the multiplier of 10 considering the age of the parents of the deceased. The Hon'ble Supreme Court in the latest judgment in the matter of **Sube Singh v. Shyam Singh** reported in **(2018) 3 SCC 18** held that in the case of death of any unmarried person, relevant consideration for applying the multiplier would be the age of the deceased and not the age of the parents of the deceased and held thus:

“4. On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of **Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Anr., (2015) 2 SCC 180** held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more *res integra*. In the case of **Munna Lal Jain and Anr. v. Vipin Kumar Sharma and Ors., (2015) 6 SCC 347** decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependents.”

18. In view of the law laid down by the Supreme Court in the matter of **Sube Singh** (**supra**) in which the Supreme Court has held that for the purpose of calculating the amount of compensation to be awarded to the claimants, the multiplier is to be applied on the basis of considering the age of the deceased on the date of accident and not on the basis of age of the parents. The Tribunal committed

manifest error in applying multiplier of 10 which is set aside.

19. The learned Claims Tribunal has further denied to award amount towards future prospects only on the ground that the deceased was in self-employment, therefore, the future prospects cannot be ascertained also appears to be not correct. The award of future prospects for any Government servant, self employed person or the person in temporary employment has been considered by the Supreme Court in the matter of **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and held thus:

“59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

The finding recorded by the Tribunal that the claimants are not entitled for an addition of amount in the income of the deceased towards future prospects is set aside. As the deceased was a self-employed person, therefore, looking to his age i.e. below 40 years, there will be an addition of 40% of established income for calculating the amount of compensation.

20. The learned Claims Tribunal awarded a total sum of Rs. 20,000/- towards other conventional heads which is also on the lower side in the light of the law laid down by the Supreme Court in the matter of **Pranay Sethi (supra)**. The award passed by the learned Claims Tribunal requires reconsideration and recalculation which this Court proposes as under.
21. The income of the deceased as on the date of accident is to be taken as Rs. 10,000/- per month i.e. 1,20,000/- per annum as assessed by the Claims Tribunal. By adding 40% of the established income towards future prospects, the total yearly income of the deceased comes to Rs. 1,68,000/- [Rs. 1,20,000+Rs. 48,000/- (40%

of Rs. 1,20,000)]. After deducting 50% of yearly income towards personal and living expenses, the total yearly loss of dependency comes to Rs. 84,000/-. At the time of accident, deceased being aged about 24 years, appropriate multiplier will be of 18. By applying appropriate multiplier of 18, total loss of dependency comes to Rs. 15,12,000/- [Rs. 84,000 x 18]. In view of the ruling rendered by the Supreme Court in the matter of **Pranay Sethi (supra)**, the appellants-claimants will be entitled for a sum of Rs. 30,000/- towards other conventional heads and further the appellants-claimants will be entitled for an amount of Rs. 1,65,000/- towards medical expenses. Now the appellants-claimants will be entitled for total amount of compensation of **Rs. 17,07,000/-** [Rs. 15,12,000 +Rs. 30,000+ Rs. 1,65,000]. The aforementioned amount of compensation will carry interest @ 6% per annum from the date of filing of claim application till its realization. Other conditions imposed by the learned Claims Tribunal will remain intact.

22. Consequently, the appeal is allowed in part and the impugned award is modified to the extent as indicated hereinabove.

Sd/-
(Parth Prateem Sahu)
Judge