

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.609 of 2015**

1. Yudishtir Yadav S/o Late Shri Shriram Yadav Aged About 42 Years.
2. Upendra Yadav S/o Late Shri Shriram Yadav Aged About 40 Years.
3. Smt. Bhukli Yadav W/o Late Shri Shriram Yadav Aged About 54 Years.

All are R/o Village Mudekela Gorrapara, P.S. Pathhalgaon, District-Jashpur, Chhattisgarh, R/o. Village Baghbahar, Parhatoli, Tahsil Patthalgaon, District-Jashpur, Chhattisgarh.

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

1. Rohit Kumar Ghritlahare S/o Gunjiram Ghritlahare Aged About 22 Years R/o Village Godi Kala Diwanpur P.S. Pathhalgaon, District Jashpur, Chhattisgarh. **(Driver)**.
2. Gunjiram Ghritlahare S/o Ramcharan Ghritlahare R/o Village Godikala, Diwanpur P.S. Patthalgaon, District- Jashpur, Chhattisgarh. **(Owner)**.

--- Respondents

For Appellants : Mr. Ajeet Kumar Yadav, Advocate.

For Respondent No.1 & 2 : Mr. Sanjeev Sahu, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****06/11/2020**

1. Appellants/claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of compensation awarded by learned Additional Motor Accident Claims Tribunal, Kunkuri, Distt Jashur, (CG) (for short, 'the Tribunal) vide award dated 18.12.2014 passed in Claim Case No.50/2011, whereby Tribunal partly allowed application filed under Section 166 of the Act of 1988 and awarded Rs.54,795/- as compensation after deducting 50% towards contributory negligence on the part of deceased.
2. Facts relevant for disposal of this appeal are that on 03.11.2009, Shriram Yadav was going to his village -Mudekela, (Gourapara) on motor cycle bearing registration No.MP56/B/1274 alongwith his wife. On the way, one Hero Honda Motorcycle bearing Registration No.CG14/B/1266 (for short

'offending vehicle') driven by non-applicant No.1 rashly and negligently dashed the motorcycle of Shriram Yadav and caused accident. In the aforesaid accident, Shriram Yadav suffered grievous injuries over his person. He died during the course of treatment. Accident was reported to Police Station -Pathalgaon based upon which crime was registered against Non-applicant No.1. After investigation charge-sheet was filed before the Court of Jurisdictional Magistrate.

3. Claimants, who are widow & children of deceased, filed an application under Section 166 of the Act of 1988 seeking compensation of Rs.27,48,304/- pleading therein that on the date of accident, deceased being a retired Gram Sahayak was drawing pension of Rs.3,804/- per month. He was also working as agriculturist and thereby earning Rs.2,54,140/- per annum.
4. Non-applicant Nos.1 & 2, driver & owner of offending vehicle, submitted their reply to application denying the pleadings made therein. It was further pleaded that claimants were not dependant upon deceased, they have wrongly mentioned age of deceased as 62 years, whereas on the date of accident, deceased was aged about 68-69 years Deceased, who was travelling alongwith his son & wife, drove his motorcycle rashly and negligently and dashed motorcycle of non-applicant No.1.
5. On appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that deceased -Shriram Yadav died on account of motor accidental injuries suffered by him in motor accident occurred due to rash and negligent driving of offending vehicle by non-applicant No.1. Tribunal allowed application in part, awarded a sum of Rs.54,795/- as compensation after deducting 50% of calculated amount of compensation on account of contributory negligence on the part of

deceased, fastened liability upon non-applicants to pay the amount of compensation, jointly or severally.

6. Learned counsel for the appellants/claimants submits that claimants have categorically pleaded in claim application that besides getting pension of Rs.3,804/- per month, deceased was also earning Rs.2,54,140/- p.a. from his agriculture field, as is evident from documents placed on record as Ex.A-18 & A-19. To prove income from agriculture claimants have also placed on record revenue documents showing agricultural property in name of deceased and also examined Yudishtir Yadav (son) & Smt. Bhukli Yadav (wife) of deceased as AW-1 & AW-3. Tribunal for the purpose of calculating income of deceased has considered the income from pension only and not the income from agriculture field, hence committed mistake. The Tribunal has also erred in considering loss of pension to claimants to the extent of 50% only. He further submits that Tribunal erroneously held that the deceased was also responsible for the accident to the extent of 50% only on the ground that on the date of accident, deceased was not having valid and effective driving license. Tribunal has awarded a sum of Rs.12,000/- under other conventional heads, which is on lower side. He submits that the amount of compensation awarded to claimants be enhanced suitably.
7. Per contra, learned counsel for the respondents submits that the Tribunal taking into consideration the fact that deceased was a pensioner has assessed loss of 50% of pension. After death of Shriram, appellant No.3- widow of deceased is being paid half of the family pension. Tribunal has correctly deducted 50% towards contributory negligence as on the date of accident, deceased was not possessing valid and effective driving license which is in contravention of provisions of the Act of 1988. Amount of

compensation awarded by the Tribunal to claimants cannot be said to be on lower side, rather it is just and proper in the given facts and circumstances of the case and does not call for any interference.

8. Respondents in support of their case has examined owner of offending vehicle as NAW-1.
9. I have heard learned counsel for the respective parties and perused the record of claim case.
10. So far as first submission with regard to loss of income assessed by the Tribunal as Rs.1,902/- is concerned, claimants themselves have admitted that deceased was a retired person and drawing Rs.3,804/- per month as pension. Taking into consideration that after death of deceased his widow will receive half of amount of family pension, assessed loss of income suffered by claimants at Rs.1,902/- only. This preposition made by the Tribunal cannot said to be erroneous. Submission with regard to income from agriculture field is concerned, Tribunal has held that after death of deceased, agricultural property will be taken care of by sons of deceased, ie appellant No.1 & 2. It is true that agriculture land recorded in favour of any person will not go alongwith him, it will remain there with the family of deceased as their asset. But at the same time it cannot be lost sight of the fact that a person who is doing any work for the purpose of yielding agriculture produce or supervising the agriculture field during his lifetime, then there is requirement of engaging other person or substitute for the same. Looking to the age of deceased, which was 68 years, he may not be able to contribute in the same capacity that of a person below 60 years of age, but looking to his experience and ability to supervise the agriculture field, his contribution cannot be ignored of earning from the agriculture field. Taking into consideration over all facts and

circumstances of the case, I find it appropriate to assess income of deceased from agriculture to the extent of Rs.1,000/- per month. In view of above, total income of deceased on the date of accident for the purpose of calculating amount of compensation will come to Rs.2,902/- (Rs.1,902 + Rs.1,000).

11. So far as second submission with regard to deduction of 50% towards contributory negligence is concerned, perusal of impugned award would show that in Para No.10 Tribunal has considered that on the date of accident, deceased was aged about 68 year, and was not possessed with valid and effective driving license. The Tribunal taking into consideration that there was no license, has recorded finding with regard to contributory negligence on the part of deceased. No other reason is assigned to record a finding of contributory negligence of deceased to the extent of 50%. Respondents/non-applicants in their reply have only pleaded that there was contributory negligence on the part of deceased but failed to prove it before the Tribunal by examining driver of one of the vehicles ie Non-applicant No.1, to prove plea of contributory negligence.

12. The Hon'ble Supreme Court in case of **Minu Rout and Anr. Versus Satya Pradyumna Mahapatra & Ors**¹, while considering the issue of contributory negligence has held as under :-

“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 Sections 279 read with Section 302 IPC read with the provisions of the MV Act. The Insurance Company, though claimed permission under Section 170 (b) of

¹ (2013) 10 SCC 695,

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 Sushil 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 in 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 P.W-2 and P.W- 3 in their cross-examination and placed reliance on them to record the finding on issue.”

13. Hon'ble Supreme Court in another judgment between **Jiju Kuruvila & Ors vs Kunjamma Mohan & Ors**², held as under :-

“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 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”

14. In the light of aforementioned law laid down in cases of **Minu Rout and Jiju Kuruvila** (*supra*), fact of contributory negligence is required to be proved by producing reliable and admissible piece of evidence by parties asserting it. If the facts and circumstances of present case is looked into, it is evident that respondents failed to prove contributory negligence on the part of deceased by placing on record any admissible piece of evidence. In case at hand, except oral statement of respondent, there is

nothing on record to show that on the date of accident deceased was driving his motorcycle in high speed and dashed against other motorcycle. Fact of contributory negligence has to be specifically pleaded and proved by the party asserting it. Merely on the ground that accident was on account of head-on collision between two vehicles, it cannot be inferred that there must be negligence on the part of drivers of both vehicle. Moreso when non-applicant No.1 -driver of offending vehicle himself did not enter into witness box.

15. In case of **Dinesh Kumar J. alias Dinesh J. Vs. National Insurance Company Ltd. & Ors**³, similar issue came for consideration and Hon'ble Supreme Court taking into consideration its earlier decisions, has held thus :-

“7. Insofar as the judgment of the High Court is concerned, the Division Bench has placed a considerable degree of importance on the fact that there was no visible damage to the lorry but that it was the motor cycle which had suffered damage and that there was no eye-witness. We are in agreement with the submission which has been urged on behalf of the appellant that plea of contributory negligence was accepted purely on the basis of conjecture and without any evidence. Once the finding that there was contributory negligence on the part of the appellant is held to be without any basis, the second aspect which weighed both with the tribunal and the High Court, that the appellant had not produced the driving licence, would be of no relevance. This aspect has been considered in a judgment of this Court in Sudhir Kumar² where it was held as follows :

“9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place.”

8. In view of the above position, we are of the view that the deduction of forty per cent which was made on the ground of contributory negligence is without any basis. Accordingly, we direct that the appellant shall be entitled to an additional amount of Rs.4.6011 lakhs which was wrongly disallowed.”

13. In case at hand, non-applicants/respondents failed to establish negligent driving on the part of deceased, therefore, the law laid down in **Dinesh Kumar's** case (supra) squarely applies in the present case. This being the position, the Claims Tribunal should not have held the deceased to be contributory negligent to the extent of 50% for the accident merely on the ground that at the time of accident, deceased was not possessing valid license.

14. In view of above, I am of the view that the Claims Tribunal erred in holding the deceased to be contributory negligent to the extent of 50% for the accident. The finding of the Claims Tribunal with regard to contributory negligence is not sustainable and the same is hereby set aside.

15. In support of proof of age of deceased, claimants have placed on record copy of School admission register, in which Death of Birth of deceased is mentioned as 23.08.1941. Age assessed by the Tribunal to be 68 years and 2 months, which will fall within age group between 65-70 years. In view of the guidelines of the Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**⁴, appropriate multiplier would be '5'.

16. The Tribunal has awarded total sum of **Rs.20,000/-** under other conventional heads, which in the opinion of this Court is on lower side and the same is required to be enhanced in view of the decision of Supreme Court in the

4 (2009) 6 SCC 121

case of **National Insurance Company Ltd. vs. Pranay Sethi⁵** and **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhuru Ram⁶**.

17. For the foregoing reasons, I propose to recompute the amount of compensation.

18. Income of deceased is taken as Rs.2,902/- per month as held above and yearly Rs.34,824/- (Rs.2,902 X 12). There will be deduction of 1/3rd towards personal and living expenses, as per decision of Hon'ble Supreme Court in case of **Sarla Verma** (supra). After deducting 1/3rd towards personal and living expenses, annual loss of dependency comes to Rs.23,216/- (Rs.34,824 – 1/3 of Rs.34,824). By applying multiplier of 5, total loss of dependency comes to Rs.1,16,080/- (Rs.23,216/- X 5).

19. Apart from this, claimants are also entitled for a sum of Rs.40,000/- towards loss of spousal consortium, Rs.40,000/- towards loss of parental consortium, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses.

20. Now claimants will be entitled for a total compensation of **Rs.2,26,080/-** (Rs.1,16,080 + 40,000 + 40,000 + 15,000 + 15,000) instead of **Rs.54,795/-** as awarded by the Tribunal. This amount of compensation shall carry interest @ 6% p.a. from the date of application till its realization. Rest of the conditions of impugned award shall remain intact.

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

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-

5 (2017) 16 SCC 680

6 2018 18 SCC 130