

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 188 of 2016

1. Usha Bai W/o Late Samaylal Mandavi, Aged About 24 Years.
2. Kumari Humeshwari D/o Late Samaylal Mandavi, Aged About 7 Years.
3. Tulendra S/o Late Samaylal Mandavi, Aged About 2 Years.
4. Komesh S/o Late Samaylal Mandavi, Aged About 04 Months. Appellant Nos.2 to 4 are Minor Represented Through Natural Guardian Mother Usha Bai. All are R/o Village Bhothli, Tahsil Dongargaon, District Rajnandgaon, Chhattisgarh.

---- Appellants

Versus

1. Tuleshwar Sahu S/o Late Nahar Sahu, Aged About 50 Years, R/o Village Buddhubharda, P.S. and Tahsil Dongargaon, District Rajnandgaon, Chhattisgarh
2. United Insurance Company Limited, Old Bus Stand Road, United Hospital Road, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

--- Non-applicant Nos.1 to 2/Respondents

For Appellants	: Mr. Abhishek Sharma, Advocate.
For Respondent Nos.1	: None.
For Respondent No.2	: Mr. Pankaj Agrawal, Advocate.

(Proceedings through video conferencing)
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

02/09/2021

1. Claimants-appellants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act of 1988') challenging the impugned award dated 03.09.2015 passed by learned Motor Accident Claims Tribunal, Rajnandgaon, (for short, 'Tribunal') in Claim Case No.33/2013, whereby Tribunal allowed application filed under Section 166 of the Act of 1988 in part, calculated total compensation of Rs.8,30,000/- in a fatal accident case, after deducting 50% towards contributory negligence awarded Rs.4,15,000/-.
2. Facts relevant for disposal of this appeal are that on 02.08.12 when Samaylal Mandavi (deceased) was returning from village Godhra on his motorcycle. At about 07:00 pm, when he reached near rice mill Godhra one another motorcycle bearing registration No.CG-08-N-1247, (for short 'offending vehicle') driven rashly and negligently by Shiv Kumar Sahu

dashed motorcycle of Samay Lal and caused accident. In the aforementioned accident, drivers of both the motorcycle suffered grievous injuries and succumbed to injuries.

3. Appellants/claimants, who are widow and children of Samaylal Mandavi (deceased), filed an application under Section 166 of the Act of 1988 seeking total compensation of **Rs.20,00,000/-** pleading therein that on the date of accident, deceased was an able bodied person of 28 years age, earning Rs.4,500/- per month as agriculture labourer. He was also earning Rs.50,000/- to Rs.60,000/- p.a from ancestral agricultural land. They were dependent upon income of deceased.
4. Non-applicant No.1/owner of offending vehicle, submitted reply to claim application and denied the facts pleaded therein. It was further pleaded that deceased Samay Lal met with accident on account of his own negligence. On the date of accident, offending vehicle was insured with non-applicant No.2, hence liability, if any, to pay amount of compensation would be of non-applicant No.2.
5. Non-applicant No.2/Insurance Company also submitted its reply to claim application denying facts pleaded therein. It was further pleaded that deceased Samay Lal met with accident due to his own negligence. As there was breach of policy condition, Insurance Company be exonerated from its liability.
6. Upon appreciation of pleadings and evidence placed on record by respective parties, Tribunal held that Samaylal Mandavi died on account of motor-accidental injuries suffered by him in an accident between two motorcycles. Deceased Samaylal Mandavi was contributory negligent. Accordingly, Tribunal allowed application in part, awarded Rs.4,15,000/- with interest @ 6% per annum after deducting 50% towards contributory

negligence, fastened liability upon non-applicant No2/Insurance Company to pay the amount of compensation.

7. Learned counsel for appellants/claimants submits that Tribunal erred in recording finding that there was contributory negligence on the part of deceased Samaylal Mandavi to the extent of 50% without there being any cogent and acceptable piece of evidence on record. Finding of contributory negligence could be recorded only when a party raising plea of contributory negligence, places reliable piece of evidence in this regard. In absence of any specific evidence that deceased was also contributory negligent to the accident, finding recorded by Tribunal in respect of Issue no.2 is not sustainable. He pointed out that for arriving at a finding of contributory negligence, Tribunal has only taken into consideration that there was head on collision between two motorcycles, without considering spot map placed on record as Ex.P-4 wherein it is shown that accident took place at the left side of road on which deceased was travelling. He placed reliance on the judgment passed by Hon'ble Supreme Court in case of **Jiju Kuruvila and others v. Kunjujamma Mohan and Ors**¹ and **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors**². Tribunal erred in awarding meager amount of compensation in the given facts of the case. Tribunal has not awarded any amount towards future prospects, as held by Hon'ble Supreme Court in case of **National Insurance Company Ltd. vs. Pranay Sethi**³. and award of compensation under other conventional heads is also on lower side and needs to be enhanced in light of decision of Hon'ble Supreme Court in case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors**⁴.

1 (2013) 9 SCC 166.

2 (2013) 10 SCC 695. .

3 (2017) 16 SCC 680

4 (2018) 18 SCC 130.

8. Learned counsel for respondent No.2-Insurance Company submits that there was head on collision between two motorcycles on a wide road. Complaint was lodged by relatives of drivers of both motorcycles against each other. The Police after completion of investigation has submitted closure report. Tribunal rightly arrived at a conclusion that deceased Samay Lal Mandhavi was also contributory negligent in the accident. Amount of compensation awarded to claimants in the facts and circumstances of the case is just and proper and does not call for any interference.
9. I have heard learned counsel for the parties and perused record of claim case.
10. So far as submission with regard to contributory negligence is concerned, perusal of record would show that claimants in their claim application have pleaded that accident was result of negligence on the part of driver of offending vehicle. Claimants have also placed on record documents prepared by the Police in criminal case as Ex-P/1 to P/9. Spot Map is placed on record as Ex.P/4. Claimants in their pleadings mentioned that deceased Samay Lal was traveling towards Rajnandgaon and driver of offending vehicle is coming from Rajnandgaon. Spot map further shows that place of accident is shown towards left side of road from Dongargaon to Rajnangaon. In support of claim, appellants have examined Usha Bai (wife of deceased) as AW/1.
11. Non-applicant No.1 did not enter into witness box.
12. Non-applicant No.2/Insurance Company in reply to claim application examined **Amulya Ranjan Panda** as NAW-2 (1). Insurance company by way of amendment in its reply has taken a plea of contributory negligence on the part of deceased Samay Lal. If the evidence of NAW-2(1), witness

of insurance Company, is considered it is only mentions that accident was a result of negligence on the part of deceased Samaylal Mandhavi. Apart from it, nothing has been stated to prove the plea of contributory negligence. Contributory negligence is a fact which is required to be proved by a party asserting it by placing cogent and reliable piece of evidence before the Tribunal. Contributory negligence cannot be held on the basis of presumption.

13. Hon'ble Supreme Court in case of **Jiju Kuruvila** (supra) while considering issue of contributory negligence has held thus :-

"20.3. Ext.-A1, FIR registered by Pampady Police against the bus driver, P.C. Kurian, under Sections 279, 337 and 304A IPC shows that the accident occurred due to rash and negligent driving on the part of the bus driver. After investigation, the police submitted a charge- sheet (Ext.-A4) against the bus driver under Section 279, 337 and 304A IPC with specific allegation that the bus driver caused the death of Joy Kuruvila due to rash and negligent driving of the bus on 16th April, 1990 at 4.50P.M. In view of the direct evidence, the Tribunal and the High Court held that the accident was occurred due to rash and negligent driving on the part of the bus driver.

20.6. The post-mortem report, Ext.-A5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit. The aforesaid evidence, Ext.-A5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident.

21. In view of the aforesaid, we, therefore, hold that the Tribunal and the High Court erred in concluding that the said accident occurred due to the negligence on the part of the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises."

14. The Hon'ble Supreme Court in case of **Minu Rout** (supra), while considering the issue of contributory negligence where there was head on collusion between the truck and car, 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 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 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.

8. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No.1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law. The Tribunal has accepted the part of oral evidence of the eye witnesses regarding the scene of accident and it has erroneously placed reliance upon the charge-sheet Ex.1, which was filed against the driver of the offending truck and deceased to hold there was contributory negligence on his part by ignoring the fact that the criminal case against the deceased was abated. Therefore, we have to hold that the finding of fact recorded on issue No.1 by the Tribunal and affirmed by the High Court in the impugned judgment, is erroneous for want of proper consideration of pleadings and legal evidence by both of them. Accordingly, we have answered point No.1 in favour of the appellants in so far as the finding recorded by the Tribunal on the question of contributory negligence of 50% on the part of the deceased is concerned.

15. In case at hand also, except pleadings made by respondent No.2/Insurance Company in their reply with regard to contributory negligence, Insurance company failed to prove or produce any cogent and reliable piece of evidence on record. Tribunal while recording finding of contributory negligence has only taken into consideration the fact that there was head on collision between two motorcycles and FIR was registered against drivers of both motorcycles. Tribunal has not taken into

consideration other supportive documents placed on record by appellants and recorded erroneous finding that deceased Samay Lal, also contributed to the accident. Finding of contributory negligence recorded by Tribunal is not supported by any cogent and reliable piece of evidence. In view of above, finding recorded by Tribunal with regard to contributory negligence is not sustainable and it is hereby set aside.

16. Coming to next argument advanced by learned counsel for appellants that Tribunal erred in not awarding any amount towards future prospects. Hon'ble Supreme Court in case of **Pranay Sethi** (supra) has held that in case deceased/victim of motor accident, was not in permanent employment and below the age of 40 years, an addition of 40% of establish income of deceased towards future prospects should be made. Relevant paragraph of **Pranay Sethi's** case reads 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.”

17. Indisputably, in case at hand, on the date of accident, deceased was aged about **20** years and not in permanent employment, therefore, there shall be an addition of 40% of established income of deceased towards future prospects for assessing total income for the purpose of calculating compensation.
18. Tribunal has awarded only **Rs.65,000/-** under other conventional heads. In case of **Pranay Sethi** (supra) Hon'ble Supreme Court has specified the heads for awarding compensation on other conventional heads and also quantified the amount for those heads. The heads on which compensation

is to be awarded are loss of consortium, loss of estate and loss of funeral expenses. In case of **Nanu Ram** (supra), Hon'ble Supreme Court has explained the types of consortium and held that there are three types of consortium ie loss of spousal consortium to wife or husband, loss of parental consortium to children and loss of filial consortium to parents of deceased.

19. For the foregoing reasons, I propose to recompute amount of compensation to be awarded to claimants.
20. Income of deceased is taken as Rs.5,000/- per month as assessed by Tribunal. By adding 40% of established income towards future prospects, total monthly income of deceased comes to Rs.7,000/- (Rs.5,000 + 40% of 5,000) and annual income as Rs.84,000/- (12 X 7000). Number of dependents on the date of accident were '4', therefore, there will be deduction of 1/4th of the income towards personal and living expenses as per decision of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Ors**⁵. After deducting 1/4th towards personal & living expenses, yearly loss of dependency will come to Rs.63,000/- (Rs.84,000/- – ¼ of Rs84,000/-). As on the date of accident deceased Samaylal Mandhavi was aged about 28 years, appropriate multiplier would be '17'. By applying multiplier of 17 to annual loss of dependency, total loss of dependency will come to Rs.10,71,000/- (Rs.63,000/- X 17). Apart from this, appellants are also entitled for a sum of Rs.40,000/- towards loss of spousal consortium to wife, Rs.40,000/- towards loss of parental consortium to child, Rs. 15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate. Now, appellants/claimants will be entitled for a total compensation of **Rs.11,81,000/-** (Rs.10,71,000/- + Rs.40,000/- + Rs.40,000/- + Rs. 15,000/- + Rs.15,000/-) instead of

5 (2009) 6 SCC 121

Rs.4,15,000/- as awarded by the Tribunal. This amount of compensation will 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 result appeal is allowed in part and impugned award stands modified to the extent as indicated above. Liability to satisfy amount of compensation shall be upon non-applicant No.2-Insurance Company.

Sd/-
(Parth Prateem Sahu)
Judge

Jamal/-