

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 21.10.2021
Pronounced on 09.11.2021
M.A(C) No.521 of 2016

1. Smt. Leena W/o Late Hitendra Verma, Aged About 28 Years R/o Village Aheri, P.O. Dhor, Thana Nandini, Tahsil Dhamdha, District Durg, Chhattisgarh
2. Bihari Lal S/o Late Jagdish Prasad Verma, Aged About 54 Years R/o Village Aheri, P.O. Dhor, Thana Nandini, Tahsil Dhamdha, District Durg, Chhattisgarh
3. Smt. Sunita W/o Bihari Lal Verma, Aged About 27 Years R/o Village Aheri, P.O. Dhor, Thana Nandini, Tahsil Dhamdha, District Durg, Chhattisgarh
4. Tatwik S/o Bihari Lal Verma, Aged About 27 Years R/o Village Aheri, P.O. Dhor, Thana Nandini, Tahsil Dhamdha, District Durg, Chhattisgarh
.....Claimants --- Appellants

Versus

1. Pradip Kumar S/o Manbodh Sahu, Through Anup Yadav R/o Motipara, Near Sharda Talkies, Durg, Tahsil And District Durg, Chhattisgarh, Pin 491001Non Applicant No.1/ Driver Of Vehicle No. C.G. 07 E 1386, Chhattisgarh
2. Anup Yadav S/o Shri Jugal Kishore Yadav, R/o Motipara, Near Sharda Talkies, Durg, Tahsil And District Durg, Chhattisgarh, Pin 491001Non Applicant No.2/ Owner Of Vehicle No. C.G. 07 E 1386, District : Durg, Chhattisgarh
3. United India Insurance Co. Ltd., Through Regional Manager, Address Kachhari Chowk, Raipur, Tahsil And District Raipur, ChhattisgarhNon Applicant No.3/ Insurance Company/ Insurer Of Vehicle No. C.G. 07 E 1386, District : Raipur, Chhattisgarh ----Respondents

For Appellants:	Shri Arvind Shrivastava, Advocate.
For Respondents No.1 & 2:	None.
For Respondent No.3:	Shri Dashrath Gupta, Advocate.

Single Bench: Hon'ble Shri Deepak Kumar Tiwari, J
C A V Judgment

1. This Appeal has been preferred by the Claimants under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act of 1988') seeking enhancement of the award dated 01.01.2016 passed by 1st Additional Motor Accident Claims Tribunal, Raipur, District Raipur (for short 'the Claims Tribunal') in Claim Case No.527/2014, whereby the Tribunal has awarded a

total amount of compensation to the tune of Rs.51,78,000/- with 7% interest per annum from the date of filing of the claim Petition till its realization

2. The facts of the case in nut-shell are that on 23.08.2014 at around 4.45 pm, Respondent No.1, while driving the vehicle bearing Registration No.CG 07 E 1386 in a rash and negligent manner, hit the motorcycle bearing its Registration No.CG 07 AM 7784 being driven by the deceased namely Hitendra Verma on the opposite side of Balaji Trading Company, PS Dhamdha, District Durg on account of which, the deceased Hitendra Verma died.

3. On account of the said accident, the Claimants, who are the wife, parents and brother of the deceased, instituted a claim Petition under Section 166 of the Act of 1988 by submitting *inter alia* that the deceased, a 30 year old, was working as a Senior Branch Manager at Bank of India, Dhamdha Branch, District Durg and used to earn Rs.70,000/- per month. The Claimants have, thus, claimed a total amount of compensation to the tune of Rs.2,36,28,000/-.

4. Learned Counsel appearing for the Appellants/Claimants submits that the Claims Tribunal, while passing the award impugned, has erred in awarding a lump sum amount of Rs.51,78,000/- and failed to appreciate the evidence on record in order to provide just and proper compensation to the Claimants.

5. On the other hand, learned counsel for the Insurance Company opposed these arguments and supported the award passed by the Claims Tribunal.

6. Heard, learned counsel for the parties at length and have also perused the records of the Claims Tribunal.

7. Bijay Patnaik (A.W.3) has proved the salary slip P-15 & P-16 of

deceased Hitendra Verma pertaining to the months of June and July 2014, according to which he was getting salary of Rs. 53,917/- per month, in which income tax was deducted @ Rs. 3,240/-per month. It is also not in dispute that the deceased was 30 years of age. Therefore, looking to this evidence, after following the settled principles relating to selection of multiplier of 17 for the age group of 25-30 and 1/3 deduction for personal expenses, the Claims Tribunal has correctly added 50% for future income from actual salary less tax in accordance with the law laid down in the matter of National Insurance Company Limited. vs. Pranay Sethi and Others reported in (2017) 16 SCC 680.

8. In the matter of Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, at para 31, it has been held that the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father. In the instant case, father of the deceased is employee of Bhilai Steel Plant, so the Claims Tribunal has correctly held that the father and brother were not dependants on the deceased.

9. In National Insurance Co. Ltd. v. Pranay Sethi (supra), conventional heads namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively to be awarded but the learned Claims Tribunal has awarded Rs.5,000/- for funeral expenses, Rs. 10,000/- for love and affection and Rs.5,000/- for loss of consortium as the Supreme Court had indicated only three heads. Therefore, under conventional

head Rs.70,000/- instead of Rs.20,000/- which was awarded by Claims Tribunal has been modified. Other computation does not call for any interference.

10. The Claims Tribunal has, in paras 8 to 10 of the impugned award, properly analyzed the fact in detail and found reliance on the evidence of Santosh Kumar Gond (A.W.2), eye witness and the spot map (Ex. D-1) therein, which clearly reveals that the place of incident is Durg-Bemetara Road and both the vehicles were coming from opposite side. Santosh (A.W.2) stated that the road is wide having two lanes in both ways. He further deposed that the bus could have been noticed from sufficient distance and there was no traffic on the road. The Claims Tribunal correctly placed reliance on the decision rendered in the matter of National Insurance Co. Ltd. vs. P. Murugan & Others reported in **2009 ACJ 2411**, wherein accident head on collision between two vehicles occurred in the middle of broad road, negligence on the part of the drivers of both the vehicles is apportioned to the extent of 50% each. In the said judgment, the Madras High Court has observed in para 7 that the trite proposition of law that whenever there is collision between two vehicles on a broad road, drivers of both the vehicles should be equally made liable for the accident and cited the decision of the Supreme Court in Bijoy Kumar Dugar v. Bidya Dhar Dutta and others reported in **(2006) 3 SCC 242**, in which, it was observed that it was but natural, as a prudent man, for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus coming from the opposite direction from a long distance, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. So this Court does not find any error on such finding about contributory negligence and

apportionment of equal liability of the deceased.

11. In light of the aforesaid discussion and modification, the Claimants/Appellants No.1 & 3 are entitled to compensation as follows:

Sl. No.	HEADS	CALCULATION
1.	Yearly Income from salary	Rs. 6,08,000/-
2.	Future Prospectus add 50%	Rs. 3,04,000/-
	TOTAL	Rs. 9,12,000/-
3.	Deduction : @ 1/3for Personal Expenses	Rs. 3,04,000/-
4.	Compensation after Multiplier 17 is applied	Rs.6,08,000X17 = Rs.1,03,36,000/-
5.	Loss of consortium	Rs.40,000/-
6.	Loss of estate	Rs.15,000/-
7.	Funeral Expenses	Rs.15,000/-
	TOTAL	Rs.10,04,06,000/-
	Deduction 50% for Contributory Negligence	Rs.5,02,03,000/-
	Enhanced Amount	Rs. 5,02,03,000- 5,01,07,8000= Rs. 25,000/-

Respondent No.3 Insurance Company is directed to pay the enhanced amount of compensation with interest @ 6% per annum from the date of filing of the Petition i.e. 16.09.2014 within a period of 60 days. The said enhanced amount with interest be paid to Appellant No.1-widow of the deceased.

12. The Appeal is accordingly allowed to the extent indicated hereinabove. Rest of the observations as made by the Claims Tribunal shall remain intact.

No order as to costs.

Sd/-

(Deepak Kumar Tiwari)
Judge