

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1228 of 2015**

Judgment Reserved On : 10/11/2021

Judgment Delivered On : 18/11/2021

1. Smt. Vimla Neti W/o Late Dilu Ram, Aged About 36 Years Occupation - House Wife
2. Ramashankar S/o Late Dilu Ram, Aged About 17 Years, Now 19 Years, Occupation - Student
3. Ganeshwar S/o Late Dilu Ram, Aged About 14 Years Occupation - Student,
4. Ku Mamta D/o Late Dilu Ram, Aged About 9 Years Occupation - Student,

Respondent No.3 & 4 Minor through Natural Guardian Mother Appellant No.1. All are R/o Village Parsa (Gondpara) Post Dandgaon Chowki (Tara), Tahsil Udaipur, District Surguja (CG)

---- Appellant**Versus**

1. Mohan, S/o Sadu R/o Sdim No. 5 Colony Chirmiri, District Koriya, Present Address - Mohan S/o Sadu Through Bajrang Lal Agrawal Neharu Park Road, Surajpur District Surajpur Chhattisgarh Driver
2. Bajrang Lal Agrawal S/o Sidhu Ram Agrawal, R/o Neharu Park Road, Surajpur, District - Surajpur Chhattisgarh Owner,
3. Branch Manager, Bharti Exa Insurance Company Ltd. Devendranagar Raipur, District Raipur Chhattisgarh.

---- Respondent

For Appellants : Shri AN Pandey, Advocate.

For Respondent No.3 : Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Deepak Kumar Tiwari, J**C A V JUDGMENT**

1. The present Appeal is directed against the award dated 23.6.2015 passed by the Motor Accident Claims Tribunal, Ambikapur, District Surguja in Motor Accident Claim Case No.128/2013 whereby the learned Tribunal granted compensation of Rs.6,82,500/-.
2. Facts of the case, in brief, are that on 12.6.2013 deceased Dilu Ram was coming from Udaipur to Ambikapur. When he reached near village Gumga, respondent No.1 was parking the vehicle on road without giving any signal or indicator and on account of wrong parking of the vehicle on National Highway, the deceased who was riding his motorcycle dashed the offending vehicle from behind, as a result he received grievous injuries on his head, mouth, chin and other parts of the body and died. The claimants/appellants being the legal representatives of the deceased filed an application under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of the deceased. The respondents filed their reply and denied the claim of the appellants. The learned Claims Tribunal after recording the evidence adduced by the parties passed the impugned award.
3. Learned counsel for the appellants would argue that the award passed by the Tribunal is not just and proper. The Claims Tribunal has not properly considered the monthly income of the deceased whereas the deceased being agriculturist and labourer used to earn Rs.6,000/- per month. However, the Claims Tribunal without considering the material available on record in respect of income of the deceased, assessed the notional income of the deceased at Rs.3,000/- per month, which is not just and proper. Further the Claims Tribunal has not properly awarded the amount on the heads of Consortium, Funeral expenses, love and

affection etc. and awarded interest @ 6% instead of 9%.

4. Per contra, learned counsel for the Insurance Company would support the impugned award.
5. In the instant case, the deceased himself dashed the stationary truck, which was parked on the road side. It was also proved that neither the lights nor any signal nor indicator was put on. The Insurance Company has specifically raised a contention in its written statement that the deceased himself, being negligent, was responsible for the said accident. The Tribunal, on appreciation of issue No.2, in paragraph-10 of its judgment, had recorded a finding that in such cases where the truck was parked on the road and a vehicle is coming from the opposite side with its lights on, then it would affect the driver of the vehicle coming from the opposite side when the lights of the truck parked on the road side are turned off and the negligence of the deceased driver does not arise.
6. In the matter of **Raj Rani & Others vs. Oriental Insurance Company** reported in **(2009) ACJ 2003**, the truck was parked in the middle of the road and the deceased dashed against the truck. It was observed that the truck was in a stationary mode, therefore, some amount of negligence on the part of the deceased cannot be ruled out.
7. Though this Appeal has been preferred for enhancement of the award and the Tribunal has assessed the notional income of the deceased at Rs.3,000/-, the fact that the accident took place in the year 2013 during which period, the minimum wage has substantially increased, therefore, Rs.4,000/- can be assessed as the notional income of the deceased per

month.

8. The deceased had no permanent job and was 38 years old. In view of the judgment of the Hon'ble Supreme Court in the matter of **National Insurance Company Limited vs. Pranay Sethi And Others** reported in **(2017) 16 Supreme Court Cases 680**, 40% of the income for future prospects is required to be added.
9. The duty of the Tribunal is to award just and proper compensation. In **Nagappa Vs. Gurudayal Singh and others** {2003 ACJ 12}, it was held that there is no restriction that compensation can be awarded only up to the amount claimed by the claimant. In an appropriate case wherein the evidence was brought on record, if Tribunal considers that the claimant is entitled to get correct compensation, then the Tribunal may pass such an award. Only embargo is, it should be just and proper that is to say it should neither arbitrary, fanciful nor unjustifiable from the evidence.
10. In view of above, this Court finds that the amount awarded by the Tribunal i.e. Rs.6,82,000/- is just and proper as it was found that in the said accident there was some amount of negligence on the part of the deceased also. Looking to such facts, no enhancement is justified.
11. Accordingly, the Appeal being devoid of any substance, fails and is hereby dismissed.
12. No order as to costs.

Sd/-
(Deepak Kumar Tiwari)
Judge