

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)
ON THE 17th OF FEBRUARY, 2024
MISC. APPEAL No. 6373 of 2023**

BETWEEN:-

- 1. SMT. ANITA BAI W/O LATE RAJKUMAR UIKEY,
AGED ABOUT 41 YEARS**
- 2. SANTOSH UIKEY S/O LATE RAJKUMAR UIKEY,
AGED ABOUT 21 YEARS**
- 3. SUBHASH UIKEY S/O LATE RAJ KUMAR UIKEY,
AGED ABOUT 20 YEARS**

**ALL RESIDENT OF VILLAGE THODA P.S. AND TEHSIL
BICHHIYA DISTRICT MANDLA MADHYA PRADESH.**

.....APPELLANTS

(BY SHRI SANJAY SAINI – ADVOCATE)

AND

- 1. SHIV SINGH MARAVI S/O KUNNU LAL MARAVI,
AGED ABOUT 38 YEARS, DRIVER OF CAR R/O
BHANGDATOLA VILLAGE BHAU BICHHIYA POLICE
STATION AND TEHSIL BICCHIYA DISTRICT MANDLA
M.P. (DRIVER OF THE OFFENDING VEHICLE)**
- 2. ABHISHEK PURI S/O LATE KAMAL PURI
GOSWAMI, AGED ABOUT 35 YEARS, R/O
BHANGDATOLA VILLAGE BHAU BICHHIYA P.S. AND
TEHSIL BICHHIYA DISTRICT MANDLA M.P. (OWNER
OF OFFENDING VEHICLE)**
- 3. THE SBI GENERAL INSURANCE CO. LTD.
THROUGH BRANCH MANAGER - BRANCH OFFICE
REGAL TOWERS 2ND FLOOR BESIDE KARTIK HOTEL**

NEAR TAIYAB LAI PETROL PUMP JABALPUR
(MADHYA PRADESH)

.....RESPONDENTS

(SERVICE OF NOTICE ON RESPONDENT NO.1 AND 2 IS DISPENSED
WITH VIDE ORDER DATED 02.02.2024)
(NON FOR RESPONDENT NO.3 THOUGH SERVED)

This appeal coming on for admission this day, the court passed the following:

ORDER

Heard on admission.

Admit.

This is an appeal filed by the appellants/claimants for enhancement of awarded amount under Section 173(1) of the Motor Vehicles Act, 1988 against the award dated 31.07.2023 passed by Member Motor Accident Claims Tribunal, Mandla M.P. in MACC No.218/2021 by which the Claims Tribunal has awarded a total sum of Rs.6,37,000/- (Six Lakhs Thirty Seven Thousand) with interest @ 7.5% per annum to the claimants for the death of Rajkumar Uikey, who died in motor vehicle accident.

2. According to claimants, the compensation awarded by the learned Tribunal is on lower side, hence need to be enhanced. So the question that arises for consideration is whether any case for enhancement of compensation awarded by the Tribunal on facts/ evidence adduced is made out and if so to what extent?

3. It is not necessary to narrate the entire facts in detail, such as how the accident occurred, who was negligent in driving the offending vehicle, who is liable for paying compensation etc. It is for the reason that all these findings are recorded in favour of claimants by the Tribunal. Secondly, the findings though recorded in favour of claimants are not under challenge at the instance of any of the respondents such as owner/driver or insurance company either by way of cross-appeal or cross-objection. In this view of

the matter, there is no justification to burden the judgment by detailing facts on all these issues.

4. As observed supra, it is a death case. On 24.12.2020, Rajkumar Uikey aged 42 years, met with a motor vehicle accident and died, giving rise to file claim petition by legal representatives (appellants herein), out of which this appeal arises seeking enhancement of compensation for his death. The case was contested by the respondents. Parties adduced evidence. The Claims Tribunal by impugned award partly allowed the claim petition filed by claimants and, as stated supra, awarded a sum of Rs.6,37,000/- (Six Lakhs Thirty Seven Thousand), after deducting 30% as contributory negligence, as compensation. The breakup is as under :-

Towards loss of dependency	Rs.8,40,000/-
Towards funeral expenses	Rs.15,000/-
Towards Loss of estate	Rs.15,000/-
Towards filial consortium	Rs.40,000/-

5. Learned counsel for the appellants submitted that learned tribunal has held in para 16 of the impugned award that respondents have failed to lead legal evidence in support of the pleadings regarding contributory negligence of the deceased. Learned tribunal has wrongly presumed 30% contributory negligence of the deceased for want of wearing helmet and non-production of driving licence of the deceased, hence finding of issue No.1-B is erroneous and perverse which should be set-aside. In support of his submissions, learned counsel for the appellants has relied upon the judgments of Hon'ble Supreme Court in the case of *Sudhir Kumar Rana vs. Surinder Singh (2008) 12 SCC 436*, *Mohammed Siddique vs. National Insurance Company Ltd. (2020) 3 SCC 57*.

6. Learned counsel for the appellant also submitted that learned tribunal has assessed the income of the deceased at Rs.6,000/- (Six Thousand) monthly in para 22 of the impugned award which should be

Rs.8,400/- (Eight Thousand Four Hundred) per month, as per the minimum wages act prevailing on the date of incident. Learned counsel further submitted that learned tribunal has not awarded any amount in the head of parental consortium to the appellants No. 2 and 3. He also submitted that as per the principle of law laid down by the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi & others, (2017) 16 SCC 680* in para 59.8, the award under the conventional heads should be increased @ 10% in every 3 years and submitted that since it is a case of the year 2020 and judgment of *Pranay Sethi (supra)* is of the year 2017, hence the amount in the head of conventional heads i.e. Consortium, loss of estate and funeral expenses should be Rs.44,000/-, 16,500/- and 16,500/- respectively. In view of above, learned counsel for the appellants prayed that the appeal be allowed and amount of compensation be enhanced substantially.

7. I have heard learned counsel for the appellant, gone through the impugned award and perused the entire record.

8. From perusal of record it is evident that the deceased was married, therefore, learned tribunal has rightly deducted 1/3 towards personal expenses. However, it appears that the income of the deceased assessed by the learned Tribunal at Rs.6,000/- (Six thousand) per month for an incident which took place in the year 2020 appears to be on lower side, which should be Rs.8,400/- (Eight Thousand Four Hundred) as per the Minimum wages Act. Keeping in view age of the deceased, multiplier of 14 appears to be just and proper. Thus, when the income of the deceased is taken into consideration at Rs.8,400/- (Eight Thousand Four Hundred) and 25% is added towards future prospects keeping in view the law laid down

by Hon'ble Apex Court in the case of *Pranay Sethi (Supra)*, yearly income of the deceased comes to Rs.1,26,000/- (One Lakh Twenty Six Thousand). 1/3 is to be deducted towards personal expenses from the yearly income, which comes to Rs.84,000/- (Eighty Four Thousand) and after applying multiplier of 14, keeping in view the age of deceased, amount towards loss of dependency comes to Rs.11,76,000/- (Eleven Lakhs Seventy Six Thousand).

9. It also appears from the record that the learned tribunal has awarded a sum of Rs.40,000/- towards loss of filial consortium to appellant No.1, which should be Rs.44,000/- in the light of the principle of law laid down in the case of *Pranay Sethi (supra)* in para 59.8 as the incident is of the year 2020. Further, the tribunal has not awarded any amount towards parental consortium to appellant No.2 and 3. Hence, an amount of Rs.44,000/- each should be awarded to appellant No.2 and 3. Though the tribunal has awarded Rs.15,000/- (Fifteen Thousand) in the head of funeral expenses and Rs.15,000/- (Fifteen Thousand) in the head of loss of estate, however, the same should be Rs.16,500/- and 16,500/- respectively in the light of para 59.8 of the case of *Pranay Sethi (supra)*.

10. Though learned tribunal has presumed contributory negligence of the deceased in the alleged incident for want of wearing helmet and non-production of driving licence of the deceased, however, in the case of *Sudhir Kumar Rana vs. Surinder Singh 2008 AIR (SC) 2405* Hon'ble Apex court has held that the question of contributory negligence would arise only when both parties are found to be negligent. 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 rashly and negligently which contributed to the accident, one fails to see as to how, only because he was

not having a licence, he would not be held to be guilty of contributory negligence. Para nos.6, 7 and 8 of Sudhir Kumar Rana (supra) are reproduced below :

“6. A contributory negligence may be defined as negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunity are afforded to do so. The question of contributory negligence would arise only when both parties are found to be negligent.

7. The question is, negligence for what? If the complainant must be guilty of an act or omission which materially contributed to the accident and resulted in injury and damage, the concept of contributory negligence would apply. [See *New India Assurance Company Ltd. v. Avinash* 1988 ACJ 322 (Raj.)]

In *T.O. Anthony v. Kavarnan & Ors.* [(2008) 3 SCC 748, it was held

"6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by

reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

8. 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 which was being driven 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."

(Emphasis supplied)

11. Thus, keeping in view the principle of law laid down in the case of *Sudhir Kumar Rana (supra)*, it can safely be said that just because the deceased was not having driving licence it cannot be presumed that the deceased was negligent in driving and contributed to the incident. Therefore, the finding of the learned tribunal regarding the contributory negligence is not based on proper appreciation of evidence, hence, findings of issue No.1-B are hereby set-aside.

12. Thus, the appellants/claimants shall be entitled for the following amount of compensation :-

Rs.11,76,000/-	Towards loss of dependency
Rs.16,500/-	Towards funeral expenses
Rs.16,500/-	Towards loss of estate
Rs.44,000/-	Towards loss of filial consortium to appellant No.1
Rs.88,000/-	Towards loss of parental consortium to appellants No.2 and 3 (44000x2)

Rs.13,41,000/-	Total

13. Thus, the appellants/claimants are entitle for a total sum of Rs.13,41,000/- (Thirteen Lakhs Forty One Thousand) instead of Rs.6,37,000/- (Six Lakhs Thirty Seven Thousand). The enhanced amount of Rs.7,04,000/- (Seven Lakhs Four thousand) shall carry interest @ 6% p.a. from the date of application till the date of payment. The payment of enhanced amount be made within a period of two months from the date of receipt of certified copy of this order. Other terms and conditions of the award shall remain intact.

14. It is pertinent to mention here that the appellant has valued the appeal as Rs.4,00,000/- (Four lakhs) and paid the Court fee as per valuation, therefore, appellant is directed to pay the Court fee on additional amount of Rs.3,04,000/- (Three Lakhs Four Thousand) also within a period

of 30 days from the date of receipt of certified copy of this order. If the Court fee is not paid within the stipulated period, then this order will be restricted only up to the amount of Rs.4,00,000/- (Four Lakhs).

15. With the aforesaid, appeal is partly allowed and disposed of.

16. Records of the claims Tribunal be sent back alongwith the copy of this order for information and necessary compliance.

No order as to costs.

**(AMAR NATH (KESHARWANI))
JUDGE**

@s