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(2018) 02 CHH CK 0104

**Chhattisgarh High Court**

**Case No:** Miscellaneous Appeal (C) No. 529 Of 2012

Daymani

APPELLANT

Vs

Jammuram And Ors

RESPONDENT

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**Date of Decision:** Feb. 6, 2018

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 166, 173
- Indian Penal Code, 1860 - Section 304A

**Hon'ble Judges:** P. Sam Koshy, J

**Bench:** Single Bench

**Advocate:** Shobhit Koshta, Vishnu Koshta, B.L. Sahu, A.S. Kachhawaha

**Final Decision:** Allowed

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**Judgement**

P. Sam Koshy, J

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the appellant-claimants seeking for enhancement of the

compensation awarded.

2. Challenge in the present appeal is to the award dated 27.3.2012 passed by the Second Additional Motor Accident Claims Tribunal, Jagdalpur at

Kondagaon, in Claim Case No. 82/2011.

3. Vide the impugned award, the learned Tribunal, in a death case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of

Rs.2,05,000/- to the appellant-claimants with interest thereon at the rate of 6% per annum. While passing the award, the learned Tribunal had

assessed the total compensation payable to the claimants at Rs.4,09,600/-, however, assessing the contributory negligence on the part of the deceased,

his liability has been fixed at the rate of 50% of the compensation assessed, i.e., Rs.2,04,500/-, rounded off at Rs.2,05,000/-.

4. Learned counsel for the appellant-claimants submits that the finding of contributory negligence is bad in law as there was no sufficient cogent evidence led by any of the parties to establish the same. Further, the amount of compensation also deserves a suitable enhancement as the income assessed itself is unreasonably low keeping in view the period of accident being 16.3.2011. He further submits that the claimant would also be entitled for compensation under the head, future prospects. So also the deduction made towards the personal expenses should be 1/4th instead of 1/3rd as has been done by the learned Tribunal. He further submits that the finding of contributory negligence was without any sufficient cogent evidence or pleading by any of the parties and that only on the basis of the evidence of the driver of the offending vehicle, the negligence part has been assumed by the learned Tribunal against the deceased and thus prayed for the setting aside of the same.

5. Learned counsel appearing for respondent no.2-owner however opposing the appeal submits that the award seems to be fair and reasonable and the same does not warrant any interference. He further submits that the finding of the learned Tribunal that the deceased was found on the middle of the road itself is a sufficient indication that he was driving the vehicle rashly and negligently and therefore the finding of contributory negligence also does not deserve to be interfered with and thus he prayed for the rejection of the appeal.

6. Having heard the contentions put forth on either side and on perusal of record, what clearly reflects is that the respondents in their written statement have not taken the plea of there being any contributory negligence. What further reflects is that the respondent no.1-driver was also prosecuted for the offence punishable under Section 304-A of the Indian Penal Code. What is also not in dispute is the fact the respondent no.1 in his evidence has accepted that he had given repeated horn on the road so that the deceased could move towards the side. This by itself would show that the respondent no.1 had sufficient time to stop the vehicle and he could have avoided the accident. It is not a case where the deceased had suddenly

bumped in the middle on the road. Except for the said evidence of the driver who himself is an accused in the criminal case, there does not seem to be

any cogent evidence led by the respondents to establish the contributory negligence. Even otherwise the finding of contributory negligence is based on assumption and presumptions which is not sustainable and the same thus deserves to be and is accordingly set aside.

7. So far as the claim seeking enhancement of the compensation is concerned, undisputedly, the date of accident being of March, 2011, the minimum

income of an unskilled labour would have been around 150-200/- a day. This Court thus assesses the minimum of it i.e. Rs.150/- per day as the income

of the deceased, which would bring the monthly income at Rs.4500/- and yearly at Rs.54,000/-, instead of Rs.3000/- per month and Rs.36000/- yearly

as assessed by the learned Tribunal. In addition, the claimants shall also be entitled for a compensation under the head, future prospects, at 40%.

Similarly, the deductions towards personal expenses also would be 1/4th instead of 1/3rd.

8. Accordingly, accepting the monthly income of the deceased at Rs.4500/-, his yearly income comes to Rs.54,000/- to which if 40%, i.e., Rs.21600/-,

is added towards future prospects, the amount would come to Rs.75,600/- of which if 1/4th, i.e., Rs.18,900/-, is deducted towards the personal

expenses of the deceased, the amount would come to Rs.56,700/- which if multiplied applying the multiplier of 16, the amount would reach to

Rs.9,07,200/-. It is thus ordered that the claimants shall be entitled for a compensation of Rs.9,07,200/- towards loss of dependency. In addition, the

claimants shall also be entitled for an additional lump sum compensation of Rs.70,000/- under the conventional heads, instead of what has been

awarded by the learned Tribunal. Thus, the claimants shall be entitled for a total compensation of Rs.9,77,200/- instead of Rs.2,05,000/- as awarded by

the learned Tribunal.

9. As a consequence, the appeal is allowed and the impugned award stands accordingly modified and enhanced to the extent that the claimants shall

be entitled to get a total compensation of Rs.9,77,200/- instead of Rs.2,05,000/- awarded by the learned Tribunal. The enhanced amount of

compensation shall also carry interest at the same rate as has been fixed by the Tribunal. Since the finding of contributory negligence is set aside by this Court, the claimants shall be entitled for the entire compensation awarded, i.e., Rs.9,77,200/-.