

**B.P.RAY, J.**

MACA NO.482 OF 2003 (Decided on 27.08.2010)

**MAHESWARI SETHI & ORS.**

..... Petitioners.

.Vrs.

**VENKATESWAR RAO & ORS.**

..... Opp.Parties.

**MOTOR VEHICLE ACT, 1988 (ACT NO. 59 OF 1988) – SEC.147.**

For Petitioners - M/s. P.Acharya, S.R.Pati, P.K.Ray & B.Dash.  
For Opp.Party - Mr. A.K.Mohanty (For O.P.No.2).

---

**B.P.RAY J.** This appeal has been filed by the claimants for enhancement of the award passed in M.A.C.T. Misc. Case No. 29/461 of 2001/2000 by the 5<sup>th</sup> M.A.C.T. Khurda. By the impugned award learned Tribunal held that the claimants are entitled to get compensation to the tune of Rs.9 lakhs and while coming to such conclusion learned Tribunal has reduced the same 50% on the reasoning that due to contributory negligence of the deceased, the total compensation is to be divided by 2 which comes to Rs.4,50,000/- Accordingly, learned Tribunal held that the claimants were entitled to an award of Rs.4,50,000/- with interest @ 6% per annum from the date of filing of the claim application i.e. from 21.12.2000 till its payment. This award is impugned in the present appeal.

2. The fact giving rise to the appeal was that while the deceased was returning to his house on his Scooter at Balugan bazaar on N.H.5 the offending truck bearing registration No. AP-16-U-9817 dashed against the deceased from his back side resultantly the deceased fell down and the truck ran over him for which the deceased died on the spot. The incident took place at about 10.30 P.M. on 20.8.2000. The post mortem examination over the dead body of the deceased was conducted in the Government Hospital at Banpur and the local police registered a criminal case. It appears from the record that the vehicle in question was validly insured with respondent no.2 covering the date of accident. The deceased was a business man dealing in prawn and fish and was about 42 years of age. According to the claimants the deceased was earning Rs.12,000/- per month.

3. The claimants have examined two witnesses and no witness was examined on behalf of the Insurance Company. The owner was set ex parte. The Insurance Company while denying its liability to pay the compensation challenged the age, occupation and income of the deceased.

4. At the trial the wife of the deceased was examined as p.w.1 and p.w.2 was an eye witness. Learned Tribunal on consideration of all the oral and documentary evidence came to the conclusion that the death of the deceased occurred due to the vehicular accident involving the offending vehicle and it was also further held that the driver of the offending vehicle was rash and negligent in causing the accident. Having

held thus, the learned tribunal also made endeavour to find out the contribution of the deceased towards family with reference to the documentary evidence filed by the claimants and accordingly learned tribunal has held that the contribution of the deceased towards the family was Rs.60,000/- per annum and applying 15 multiplier the amount of compensation was arrived at Rs.9 lakhs. This amount of Rs.9 lakhs was divided by 2 by the learned Tribunal on the reasoning that there was contributory negligence on the part of the deceased and on such basis the amount of compensation was fixed at Rs.4.50 lakhs.

5. I have heard learned counsel for the parties and also perused the records. After perusal of the records and the materials available on it, I am of the considered opinion that the learned Tribunal committed manifest error in reducing the quantum of compensation by 50% on the reasoning of contributory negligence. As a matter of fact, no evidence was made on behalf of the Insurance Company to show that there was negligence on the part of the deceased in contributing to the accident. Such reasoning passed by the Tribunal to reduce the quantum of compensation by 50% is without any basis and therefore, I am of the opinion that the learned Tribunal was wholly unjustified in compensation by 50%. Therefore, without disturbing the findings of the learned Tribunal, I hold that the reduction of compensation by 50% is unsustainable. In other words, the claimants are entitled to compensation of Rs.9 lakhs which was arrived at by the learned Tribunal and accordingly, I so direct. The Insurance Company is also directed to deposit the enhanced amount of compensation with 6% interest from the date of filing of the appeal i.e. 15.7.2003 within a period of two months hence.

6. Now it appears that claimant-respondent no.5 is dead. Out of the enhanced amount of compensation the Tribunal is directed to keep 50% of the enhanced amount in fixed deposit in the name of Respondent Nos. 1 to 4 for a period of 5 years and the balance amount shall be disbursed in favour of the residual claimants.

The appeal is accordingly allowed. No cost.

Appeal allowed.