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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 635 of 2006

1. Sunil Prasad, aged about 35 years, Son of Shri R.B. Prasad.
2. Ku. Apoorva, aged about 12 years, D/o Shri Sunil Prasad.
3. Avinash Prasad, aged about 11 years, son of Shri Sunil Prasad.
4. Ku. Anjali, aged about 10 years, D/o Shri Sunil Prasad

Appellants No.2 to 4 are minors, through their natural guardian father Shri Sunil Prasad and Resident of Near Mata Choura Kududand, Gali No.5, Bilaspur, District Bilaspur, Chhattisgarh.

---- Appellants

versus

1. Sanjeev Kumar Sahu, aged about 34 years, son of Shri Chandram Sahu, Resident of Village Sankar, Akaltara, Police Station Akaltara, District Janjgir-Champa, Chhattisgarh.
2. Dhananjay Sahu @ Sonu, aged about 23 years, Son of Shri Ram Sahu, Resident of Village Podidalha, Akaltara, Police Station Akaltara, District Janjgir-Champa, Chhattisgarh
3. The New India Insurance Company Limited, Through The Branch Manager, UTI Building, In front of Rajiv Plaza, Bus Stand Bilaspur, Chhattisgarh.

---- Respondents

And

Miscellaneous Appeal (C) No.370 of 2006

The New India Assurance Company Limited, Through its Divisional Manager, Divisional Office, above UTI, In front of Rajiv Plaza, Bus Stand Road, Bilaspur, District Bilaspur, Chhattisgarh.

---- Appellant

versus

1. Sunil Prasad, aged 35 years, Son of Shri R.B. Prasad.
2. Ku. Apurva, aged 12 years, D/o Sunil Prasad.

3. Avinash Prasad, aged 11 years, son of Shri Sunil Prasad.
4. Ku. Anjali Prasad, aged 10 years, D/o Shri Sunil Prasad, [Respondents No.2 to 4 are minors, through their natural guardian father Sunil Prasad (Respondent No.1)]

   All are R/o Near Mata Chaura, Lane No.5, Kududand, District Bilaspur, Chhattisgarh.
5. Sanjeev Kumar Sahu, aged 34 years, son of Shri Chand Ram Sahu, Resident of Village Sankar, Akaltara, District Janjgir, Chhattisgarh.
6. Dhanjay Sahu @ Sonu, aged 23 years, Son of Shri Ram Sahu, Resident of Village Paudi Dalha, Akaltara, Police Station Akaltara, District Janjgir, Chhattisgarh

---- Respondents

For Claimants : Shri R.K. Pali, Advocate

For Insurance Company : Shri Dashrath Gupta, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

02.12.2016

1. These two appeals are being disposed of by one judgment since both the appeals arise out of one award dated 08.08.2006 passed by the First Additional Motor Accidents Claims Tribunal, Bilaspur (for short “the Tribunal”) in Claim Case No.103 of 2006.

2. The undisputed facts are that on 28.11.2005 Claimant No.1 – Sunil Prasad was driving his motorcycle. It is alleged that one Tractor bearing registration No. CG-11A/3063 along with Trolley No. CG-11A/3064 came from behind in high speed and hit the motorcycle. Due to the accident, Claimant – Sunil Prasad suffered injuries and his wife Rajkumari unfortunately died. Two claim petitions were filed, one for the personal injuries suffered by Sunil Prasad and one on account of the death of his wife Rajkumari. As far as claim petition of Sunil Prasad is concerned, he was awarded compensation. He had also filed an appeal for enhancement of the compensation before this Court. The Insurance Company had also challenged the award passed in favour of Sunil Prasad with regard to his injuries. The appeal filed by Sunil Prasad was dismissed on merits. The appeal filed by the Insurance Company was not dismissed on merits, but on account of non-compliance of the orders of this Court. Now, the present two appeals arise out of the award passed in respect of death of Rajkumari, wife of Sunil Prasad and mother of Claimants No. 2 to 4.

3. As far as negligence is concerned, I am clearly of the view that in view of the fact that the award in the case of Sunil Prasad has attained finality, the finding of negligence recorded therein operates as *res judicata* in the present case. Even otherwise, the admitted facts show that the motorcycle was going in front and it was hit from behind by the offending vehicle Tractor-Trolley. This itself was enough to fasten the liability on the driver of the Tractor-Trolley. Claimant Sunil Prasad has stepped into the witness box and stated that he was driving the motorcycle at a slow speed and the Tractor-Trolley hit the motorcycle from behind. The driver of the Tractor-Trolley has not been examined and therefore, adverse inference has to be drawn against him. Therefore, I uphold the finding arrived on the issue of negligence.

4. Section 166 of the Motor Vehicles Act, 1988 mandates that the Claims Tribunal should award just compensation. What is just compensation has been subject matter of large number of cases and it is not necessary to multiply all the authorities. As far as compensation is concerned, deceased Rajkumari was a housewife, aged about 30 years.

5. In **Arun Kumar Agrawal v. National Insurance Co. Ltd., AIR 2010 SC 3426,** the Apex Court, while dealing with the issue as to how the income of a housewife has to be assessed, approved the observation of the Andhra Pradesh High Court in the following terms:

> "**27**. In A. Rajam v. M. Manikya Reddy, 1989 ACJ 542 (Andhra Pradesh HC), M. Jagannadha Rao, J. (as he then was) advocated giving of a wider meaning to the word 'services' in cases relating to award of compensation to the dependents of a deceased wife/mother. Some of the observations made in that judgment are extracted below:
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> > "The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife.
> >
> > While estimating the 'services' of the housewife, a narrow meaning should not be given to the meaning of the word 'services' but

> it should be construed broadly and one has to take into account the loss of 'personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services."

6. The Apex Court, in **Arun Kumar Agrawal case** (supra), recognised the fact that the contribution made by the housewife to her house is invaluable and cannot be computed in terms of money. The gratuitous services, which are rendered by a housewife or a mother, are services rendered with true love and affection. These services can never be replaced by hiring a maid. One must remember that in Indian society, a mother not only serves her children, but she is also a teacher, guide, mentor and philosopher for them. A mother inculcates good habits in her children. It is the mother who teaches her children what is good and what is bad. These are moral values which can be taught by a mother only and no one else. While assessing the contribution of a mother, the Court should not only be guided by the material aspects, but also by the nature of the duties performed by her. A mother works with selfless devotion. She has no hours of work. She can be the first person to get-up in the morning in the house and can be the last person to go to sleep in the night. The contribution of a mother, in fact, can never be converted into rupees and paise. But, within the constraints of law and facts of each case, this Court has to decide what is the contribution of a mother?

7. In the present case, deceased Rajkumari was a housewife and she would have been helping and serving her children. She would bathe her children, provide them food and she would prepare and send them to school. Therefore, her contribution to her children and husband would be immense. The Claims Tribunal has assessed the income of the deceased at Rs.2,400/- per month only. I assess the contribution of the deceased to the house at Rs.3,000/- per month. Since, what I have assessed is the contribution of the deceased towards her family, no further deduction is required to be made because this is the assessment of the contribution being made by her to her family members and not the assessment of her earning capacity. Therefore, the annual compensation works out to (Rs.3,000/- x 12 =) Rs.36,000/-. Since the deceased was aged about 30 years, the appropriate multiplier applicable in this case is 17. As such, the compensation on account of loss of income works out to (Rs.36,000/- x 17 =) Rs.6,12,000/-. In addition thereto, a sum of Rs.18,000/- is awarded for funeral expenses and a sum of Rs.50,000/- is awarded to the husband for loss of consortium. Thus, the total compensation works out to (Rs.6,12,000/- + Rs.18,000/- + Rs.50,000/- =) Rs.6,80,000/-. Thus, the amount of compensation of Rs.3,90,600/- awarded by the Claims Tribunal to Claimants is enhanced to Rs.6,80,000/-.

8. On the amount of compensation of Rs.6,80,000/-, the Claimants shall also be entitled to interest @ 9% per annum from the date of filing of their claim petition till payment/deposit of the full amount of compensation. Obviously, the Insurance Company shall be entitled to adjust the amount of compensation, if any, which it has already paid or deposited.

9. The total amount of compensation of Rs.6,80,000/- is however, apportioned as follows:

Sl. No.	Claimants	Amount To Be Disbursed (Rs.)
1	Claimant Sunil Prasad (husband of deceased Rajkumari)	2,30,000
2	Claimant Ku. Apoorva (Daughter)	1,50,000
3	Claimant Avinash Prasad (Son)	1,50,000
4	Claimant Ku. Anjali (Daughter)	1,50,000
	Total =	**6,80,000**

10. The amount payable to Claimant – Sunil Prasad shall be paid to him along with the interest accrued thereon. However, the amount payable to children/ Claimants No.2 to 4 shall be kept in a fixed deposit till they attain the age of 21 years.

11. The appeal preferred by the Claimants is allowed and the award of the Claims Tribunal is modified to the extent indicated above. However, the appeal preferred by the Insurance Company is dismissed.

Sd/-

(**Deepak Gupta**)
CHIEF JUSTICE

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