NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1535 of 2018

1. Firat Ram Yadav S/o Jaitram Yadav; aged about -55 years;

2. Smt. Sumitra Yadav W/o Firat Ram Yadav; aged about -53 years, Both R/o Village- Gondali; Tahsil and Police Station- Bilaigarh; District (Revenue and Civil)- Balodabazar (C.G.);

---- Appellant/claimants

Versus

1. Fool Prasad Sahu S/o Kholbahra Ram Sahu; aged about- 32 years; (Driver of Vehicle Scorpio No. C.G. 22/AB/9624)

2. Umashankar Sahu S/o Kholbahra Ram Sahu; aged about- 36 year; (Owner of vehicle Scorpio No. C.G. 22/AB/9624)

Both R/o Village- Gondali; Tahsil and Police Station- Balaigarh; District (Revenue and Civil)- Balodabazar (C.G.);

3. The Oriental Insurance Company Limited; Division Office No. 03(19.300);

R. K. Plaza, Pachpedi Naka Ring Road No. 01, Raipur (C.G.) (Insurer of Vehicle Scorpio No. C.G. 22AB/9624)

---- Respondents

For Appellant	:Shri Anand Kesharwani, Advocate
For Respondent No. 1 &2	: Shri Sumit Shrivastava, Advocate
For Respondent No. 3.	: Ms. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

10.12.2018

1. This appeal has been preferred by the claimants, who are unfortunate parents of deceased – Rohit Yadav, aged about 26 years, against the award dated 23.07.2018 passed by Second Additional Motor Accident Claims Tribunal, Balodabazar in Claim Case No.89/2017 awarding total compensation of Rs.5,33,000/- along with interest @ 9 % per annum from the date of filing of claim petition till its actual payment, fastening liability on the respondents No. 1 to 3 jointly and severely to pay compensation to the claimants.

(2) As per claim petition filed under Section 166,140 of the Motor Vehicle Act by the claimants/parents of the deceased, on 09.04.2017 at about 4.30 p.m. deceased Rohit Yadav was going to drop his relative on his Motorcycle, near Mahaveer Rice Mill Basna road, respondent No. 1-Fool Prasad Sahu, while driving the Scorpio (offending vehicle) bearing registration No. C.G. CG22-AB-9624 rashly and negligently, dashed the motorcycle of the deceased, due to which he sustained severe injuries on his head and various parts of the body and died on the spot. The offending vehicle was owned by respondent No. 2- Umashankar Sahu, and insured by respondent No. 3- The Oriental Insurance Company Limited.

(3) Learned Counsel appearing for the appellants/claimants submits that though the Tribunal has rightly assessed the monthly income of the deceased as Rs. 6,000/-, however, after deducting 1/3rd from it towards personal and living expenses of the deceased Tribunal has erred in calculating the monthly loss of dependency as Rs. 2,000/- whereas it should have been Rs. 4,000/- Infact 1/3rd deduction towards personal and living expenses done by the Tribunal is also not in accordance with law

as has been held in view of judgment of the Supreme Court in case of **Sarla Verma(Smt) & others V. Delhi Transport Corporation & another reported in 2009(6)SCC121** and considering the fact that the deceased was bachelor Tribunal ought to have deducted 50% under this head. Learned Claims Tribunal has erred in assessing the income of the deceased as Rs. 2,000/- as the Claims Tribunal, on the basis of evidence available on record, has rightly assessed the income of the deceased as Rs.6,000/- but while deducting 1/3rd of it towards personal expenses, wrongly calculated the same as Rs. 2,000/- whereas it should be Rs. 4,000/- per month whereas the Tribunal has certainly fallen in error in deducting only 1/3rd towards personal expenses of the deceased who is bachelor as in view of judgment of the Supreme Court in case of Sarla Verma (Smt.) & others v. Delhi Transport Corporation & another[1] if the deceased was a bachelor, one half (50%) of the income of deceased should be deducted towards personal & living expenses of the deceased. He further submits Tribunal has further erred in not awarding any sum towards future prospect and amount award under the head of funeral expenses i.e. Rs.25,000/- is also appears to be on lower side which deserves to be enhanced suitably in view of the judgment of the Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***.

(4) Per contra, counsel for respondent No. 1 & 2 opposes the contention made by the learned counsel for the appellant.

(5) Learned counsel for the respondent No. 3/Insurance Company opposes the contention made by the learned counsel for the appellant

1 2009 (6) SCC 121

and argues on this fact that learned Tribunal has wrongly deducted 1/3 income of the deceased towards his personal expenses as the deceased was unmarried persona therefore, deduction should be 50% of the income of the deceased towards his personal expenses.

(6) I have heard learned counsel appearing for the parties and perused the award impugned with utmost circumspection.

(7) It is undisputed fact that age of the deceased was 26 years on the date of accident i.e. 9.4.2017. Further income of the deceased, which has been assessed by the Claims Tribunal, as Rs. 6,000/- as per minimum wages at the relevant time is also not disputed. Further no amount was given towards future prospect and filial to the claimants as per judgments of the Supreme Court in **Pranay Shetty (supra)** and learned Tribunal has wrongly deducted 1/3 income of the deceased towards his personal expenses whereas it should be deducted 50% towards personal & living expenses of the deceased. Sofar as the amount of compensation towards love and affection (filial) granted by the Tribunal is concerned, in view of the Honable Supreme Court judgment in the matter of ***Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram and others in Civil Appeal No.9581/2018 arising out of SLP (Civil) No.3192/2018,*** the same can not be said to be on the higher side. Thus, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs. 6,000 per month.	72,000/- per annum
02.	40% of (i) above to be added towards future prospects.	Rs.72,000/- +28,800/- = Rs.1,00,800/-
03.	50% deduction towards personal and living expenses of the deceased	Rs.50,400/-

04.	Multiplier of 17 to be applied	Rs.8,56,800/-
05.	Towards loss of Estate & Funeral expenses	Rs.30,000/-
06.	Towards love & affection (filial)	Rs.1,00,000/-
07.	Total compensation	Rs.9,86,800/-

Since the Tribunal has already awarded Rs.5,33,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.4,53,800/- with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

08. In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya)
Judge

Amita