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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1558 of 2018

1. Smt. Jini Yadav W/o Late Ram Prasad Yadav Aged About 32 Years
2. Jatin Yadav S/o Late Ram Prasad Yadav Aged About 15 Years
3. Ku. Bhumika Yadav D/o Late Ram Prasad Yadav Aged About 14 Years

Appellants No. 2 & 3 are Minor Through Natural Guardian Mother Smt. Jini Yadav, W/o Late Ram Prasad Yadav, R/o Indira Nagar, Karhidih, Chikhli, Durg, Tahsil And District Durg Chhattisgarh.

---- Appellants Claimants

Versus

1. Mohd. Mohseen S/o Mohd. Idrish Aged About 25 Years R/o Qr.No. 83, Brahmanpara, Bidora, Tahsil - Sahaspur Lohara, District Kabirdham Chhattisgarh. - Driver
2. Javed Meman S/o Arif Meman Aged About 25 Years R/o Qr. No. 83, Brahmanpara, Bidora, Tahsil - Sahaspur, Lohara, District Kabirdham Chhattisgarh – Owner.
3. Bajaj Alliance Insurance Company Limited Through Branch Manager, Office 1st Floor, Shiv Mohan Bhawan, Pandri, Raipur, District Raipur Chhattisgarh - Insurer

---- Respondents

For Appellants	:	Shri PR Patankar, Advocate.
For Respondent No.1 & 2	:	Shri RK Patel, Advocate.
For Respondent No.3	:	Shri Ghanshyam Patel, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

06/12/2018

This appeal is by the claimants against the award 17.5.2018 passed by 7th Additional Motor Accident Claims Tribunal, Durg in Claim Case No.260/2016 awarding total compensation of Rs.10.78 lacs with interest @ 9% per annum from the date of application till realization, fastening liability on the non-applicants jointly and severely.

02. As per claim petition, on 17.12.2015 at around 8 pm while deceased Ram Prasad Yadav was going on vehicle Pleasure bearing No. CG 07 AJ 4126 which was being ridden by his wife

applicant/claimant No.1 Smt. Jini Yadav with a moderate speed, non-applicant No.1 Mohd. Mohsin by driving Maruti Alto 800 bearing No. CG 09 JB 1230 in a rash and negligent manner, dashed the vehicle of the deceased from backside. As a result thereof, Ram Prasad Yadav fell down, suffered grievous injuries and ultimately died on 19.12.2015 during treatment in Chandulal Chandrakar Hospital, Nehru Nagar, Bhilai. On report being made, offence under Sections 279 & 304A of IPC was registered against non-applicant No.1 by the police and charge sheet was filed against him.

03. On claim petition being filed by the claimants, widow & minor children of the deceased, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.

04. Learned counsel for the appellants/claimants submits that though he has raised various grounds in the memo of appeal, however, he is pressing this appeal only on the ground that the learned Tribunal has wrongly deducted House Rent Allowance (HRA) of Rs.1200/- from the income of the deceased for assessing the compensation and further, that the Tribunal has erred by not awarding any amount towards parental consortium to the minor children of the deceased as per decision in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, in Civil Appeal No. 9581 of 2018 arising out of SLP (Civil) No.3192 of 2018.*** He also placed reliance on the decisions of ***High Court of Bombay in FA No.257/2009, Vithal Rao and others Vs. Syed Mir Abidali and others***, ***High Court of Punjab & Haryana in FA No.4688/2015, Smt. Raj Rani and others Vs. Dharam Pal and others; High Court of Patna in MA No.373/3011, Chandrawati Devi and another Vs. Siya Ram Mahto and another;*** and ***decision of High Court of Kanataka in MFA No.8638/2013 (MV), Basamma Vs. Managing Director and others***.

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation, which needs no interference by this Court. He

contended that as per decision in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, no amount is payable for parental consortium in favour of children of the deceased. He further submits that the Tribunal has rightly deducted HRA of Rs.1200/- from the income of the deceased for calculating the compensation. He placed reliance on the decision of the Hon'ble Supreme Court in the matter of ***Central Board of Dawoodi Bohra Community and another Vs. State of Maharashtra and another, (2005) 2 SCC 673***.

06. Heard learned counsel for the parties and perused the material available on record.

07. The only dispute raised by the appellants in this appeal is whether the Tribunal was justified in deducting HRA of Rs.1200/- being received by the deceased from his income for computing compensation and has erred by not granting any amount towards parental consortium to minor children/claimants No. 2 & 3 of the deceased.

08. As per Ex.P/13 i.e. the documents from March, 2015 to November, 2015 showing amount payable to the employees of Univabs Sleepers Pvt. Ltd. where the deceased was working, towards HRA and Conveyance Allowance. As per Ex.P/13, it is clear that the deceased was getting Rs.1200/- per month towards HRA and Rs.2000/- towards conveyance allowance. The conveyance allowance has not been taken as income of the deceased by the Tribunal as it is used for use of vehicle to attend the official duties. To that extent, the Tribunal has not committed any illegality. However, the Tribunal was not justified in deducting HRA from the income of the deceased. As per AW-1 Smt. Jini Yadav, in para-9, she has stated that her husband/deceased was getting Rs.9000/- per month including all the allowances as salary and this fact has not been challenged by the non-applicants. AW-2 Mukesh Kumar Dewangan, Accountant of the company has also stated that the deceased was being paid Rs.9000/- inclusive of HRA and conveyance allowance as salary as per Ex.P/10 i.e. salary certificate, which has been duly proved by him.

HRA is paid to the employee if he/she is not provided official accommodation, so that he/she may utilize the said amount for getting accommodation to live in. As such, the HRA allowance is a part of income of the employee for the purpose of computation of compensation. Hence the Tribunal was not justified in deducting the amount towards HRA of Rs.1200/- from the income of the deceased for assessing the compensation. Being so, the income of the deceased comes to Rs.7000/- (Rs.5800/- + Rs.1200/-) whereas the Tribunal has considered the same as Rs.5800/- only.

09. As regards grant of parental consortium, learned counsel for the insurance company submits that as per judgment in *Pranay Sethi* (supra), which is delivered by five-Judge Bench, no amount towards parental consortium is to be granted to the claimants. Though the Hon'ble Supreme Court in *Magma General Insurance Co. Ltd.* (supra) has granted parental consortium, but the said judgment was delivered by two-Judge Bench and in view of decision of the Hon'ble Supreme Court in *Central Board of Dawoodi Bohra Community* (supra), the judgment in Pranay Sethi (supra) will prevail over the judgment in *Magma General Insurance Co. Ltd.* (supra).

10. In the judgment delivered in *Magma General Insurance Co. Ltd.* (supra), the Apex Court has considered its earlier judgment in *Pranay Sethi* (supra) elaborately and observed as under:

> *"8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.*
> *In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.*
> *The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. {Rajesh and others Vs. Rajbir Singh*

and others, (2013) 9 SCC 54}

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation." {Blacks Law Dictionary (5th Ed. 1979).

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training.

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where parents have lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count (Rajasthan High Court in Jagmala Ram @ Jagmal Singh & others V. Sohi Ram & others, 2017(4) RLW 3368 (Raj). However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).

11. In the present case, considering the fact that deceased Ramprasad Yadav died at the age of 38 years leaving behind his wife, aged 32 years, two minor children Jatin Yadav & Ku. Bhumika Yadav, aged 15 & 14 years respectively at the time of accident, the Motor Vehicles Act is a benevolent provision, this Court feels it proper to grant compensation to the minor children – claimants No. 2 & 3 towards parental consortium @ Rs.30,000/- each i.e. total Rs.60,000/-.

12. Thus, on the basis of above, the claimants are held entitled for compensation in the following manner:

Sl. No.	**Heads**	**Calculation (in rupees)**
01.	Income of the deceased @ Rs.7,000/- per month.	84,000/-
02.	40% of (i) above to be added towards future prospects	84,000 + 33,600 = 1,17,600/-
03.	1/3rd deduction towards personal and living expenses of the deceased	1,17,600 – 39,200 = 78,400/-
04.	Multiplier of 15 to be applied	78,400 x 15 = 11,76,000/-
05.	Towards loss of estate, loss of spousal	Rs.70,000/-

	consortium and funeral expenses	
06.	Towards loss of parental consortium @ Rs.30,000/- to claimants No. 2 & 3 each.	Rs.60,000/-
	Total :	**13,06,000/-**

Since the Tribunal has already awarded Rs.10,78,000/-, after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs.2,28,000/-/-with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

13. In the result, the appeal is allowed in part with modification in the impugned award to the above extent. Insurance company to deposit the above amount with interest within a period of 45 days from today with the concerned Tribunal.

Sd/

(Gautam Chourdiya)

Judge

Khan