NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 535 of 2014

{Arising out of order dated 01.03.2014 passed by learned Motor Accident Claims Tribunal Raigarh, Chhattisgarh in Claim Case No.42 of 2013}

Manager, The Oriental Insurance Company Limited Raigarh Raigarh, Tehsil and District Raigarh, Chhattisgarh

---- Appellant

Versus

1. Smt.Sindhumati Nande W/o Late Govind Nande Aged About 44 Years, Occupation Housewife, R/o Village Dumarpali, Tehsil Kharsia, District Raigarh, Chhattisgarh
2. Smt. Ranjita Satpathi W/o Anurag Satpathi Aged About 22 Years, Occupation Housewife, R/o Village Pakergaon, Tehsil Lailunga, District Raigarh, Chhattisgarh
3. Shatrughan Sahu S/o Jailal Sahu (Vehicle Driver), Occupation Vehicle, R/o Jagatpur, Tehsil and District Raigarh, Chhattisgarh
4. Omprakash Patel S/o Yuvraj Singh Patel, Occupation Vehicle Owner, R/o Jagatpur, Raigarh, Tehsil and District Raigarh, Chhattisgarh

---- Respondents

For Appellant	: Shri Sudhir Agrawal, Advocate
For Respondents No.1 & 2	: Shri Rajkumar Pali, Advocate
For Respondents No.3 & 4	: None

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

03.09.2020

1. Appeal is at the instance of the Insurer of the offending vehicle. Grievance is mainly with regard to the fixation of quantum of compensation in connection with the death of the deceased, who lost the life in a road traffic accident involving the said vehicle. The main grounds are that the

monthly income fixed is on the higher side and that the Tribunal has gone wrong in adopting the multiplier of 10, instead of 9, in case of death of the deceased, who was aged about 57 years.

2. The sequence of events reveals that on 26.12.2012 when the deceased was driving a Moped (two-wheeler) and he reached the place of occurrence at about 2:10 PM, he was knocked down from behind by the Dumper bearing registration No.CG-13/A/8868, causing fatal injuries leading to his death. This was sought to be compensated by filing claim petition before the Tribunal by the widow and the daughter. The owner and driver did not choose to contest the matter, despite the completion of service of notice by effecting paper publication and hence they were set *exparte*. The Appellant, in the said circumstance filed a petition to contest the claim on wider defence invoking the powers under Section 170 of the Motor Vehicles Act, 1988, which however came to be dismissed. It was contended by the Claimants that the deceased was serving as a Priest in a Temple and was having substantial income. This was accepted by the Tribunal and Rs.9,000/- was reckoned as the monthly income, based on the oral evidence. Adopting a multiplier of 10 and after deducting 1/3rd towards personal expenses, the loss of dependency was worked out as Rs.7,20,000/- (9,000 x 12 x 2/3 x 10). The Tribunal awarded a sum of Rs.2,000/- towards funeral expenses and another Rs.2,000/- towards loss of consortium and thus, the total compensation was fixed as Rs.7,24,000/-. Since existence of valid a insurance policy issued by the Appellant was admitted before the Tribunal, the compensation with interest, as specified, was directed to be satisfied, mulcting the liability upon the Insurer of the offending vehicle, which is put to challenge in this

appeal; contending that the quantum of compensation awarded is on the higher side.

3. The learned counsel for the Appellant submits that the deceased, as noted by the Tribunal in paragraph-14 of the award, was aged about 57 years and in the said circumstance, the appropriate multiplier as held by the Apex Court in **Sarla Verma v. Delhi Transportation Corporation** reported in **(2009) 6 SCC 121**, to the extent as affirmed by the Constitution Bench in **National Insurance Company Limited v. Pranay Sethi & Others** reported in **(2017) 16 SCC 680**, could only have been 9 and not 10. Similarly, there was no documentary evidence to prove the income of the deceased and in the said circumstance, the quantum of compensation awarded by the Tribunal requires to be scaled down.

4. On going through the materials on record and the contents of the award passed by the Tribunal, it is seen that the monthly income was reckoned based on the pleadings and the evidence brought on record. It was not successfully rebutted by the Appellant. That apart, it is to be noted that the deceased was aged about 57 years and was stated as working as 'Pujari' in a Temple and further that, the accident was just 'five days' prior to the commencement of the year '2013'. The learned counsel for the Appellant submits that the appeal is pressed only with reference to the adoption of appropriate multiplier, which, based on the age of the deceased, ought to have been only '9' and not 10, in view of the binding precedents cited supra. We find some force in the said submission. However, while considering whether any re-calculation is necessary, adopting the appropriate multiplier as '9' instead of 10, it is to be noted

that the possible variation, if at all any, under this head, can only be Rs.72,000/- (9,000 x 12 x 2/3 x 1). It is to be at the same moment, that the Tribunal has not reckoned the 'future prospects', which considering the age of the deceased as 57 years, would have provided a hike by 10%, based on the judgment in **Pranay Sethi** (supra).

5. Similarly, as per the binding precedents (supra), the 1st Claimant/widow is entitled to get a sum of Rs.40,000/- towards loss of consortium, whereas only Rs.2,000/- has been awarded by the Tribunal. As per the very same judgments, funeral expenses shall be to the tune of Rs.15,000/-, whereas only Rs.2,000/- has been awarded under this head. Even though, the Claimants were entitled to get Rs.15,000/- towards loss of estate, no amount has been awarded by the Tribunal under this head.

6. Further, in view of the expansion of the term 'Consortium' as given by the Apex Court in the subsequent decision in **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram & Others** reported in **(2018) 18 SCC 130**, it can be of three types; **Parental consortium** (payable to children because of the death of parents); **Spousal consortium** (payable to the spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children). This being the position, the 2nd Claimant/daughter is also entitled to get a sum of Rs.40,000/- towards loss of parental consortium. Thus, re-calculation of the compensation granting appropriate amounts as payable based on the verdicts passed by th Apex Court, it will definitely over than the figure of the alleged excess of amount of Rs.72,000/- awarded by the Tribunal because of the adoption of wrong

multiplier of 10, instead of 9. In other words, such a re-calculation changing the adoption of multiplier from 10 to 9, will not tilt the balance in any manner.

7. In the above circumstance, we are of the view that the appeal is devoid of any merit. No tenable ground is raised to call for interference. Appeal stands dismissed accordingly.

Sd/-	Sd/-
(P. R. Ramachandra Menon) **Chief Justice**	**(Parth Prateem Sahu)** **Judge**

Anu