NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1200 of 2013

{*Arising out of Award dated 24.09.2013 passed by the Additional Motor Accident Claims Tribunal, North Bastar Kanker, in Claim Case No. 08/2013*}

1. Smt.Geeta Mandal W/o Paritosh Mandal Aged About 43 Years
2. Paritosh Mandal S/o Tarapado Mandal Aged About 45 Years
3. Surjeet Mandal S/o Paritosh Mandal Aged About 18 Years

All R/o Village U.V. No. 17, Village- Mohli (Thothra), Tahsil. And Police Station Umarkot, Distt. Navrangpur (Orissa).

---- Appellants

Versus

1. Bhagwani Ram Sahu S/o Lakhan Lal Sahu Aged About 22 Years R/o Joratarai, P.S. Bhakhara, Distt. Dhamtari C.G.
2. Hemant Arora S/o Subhash Chandra Arora Aged About 36 Years R/o 148, Shailendra Nagar, Raipur, Tah. And Distt. Raipur C.G.
3. Chola Mandalam M.S. General Insurance Company Limited, Through- Branch Manager, Branch Office, Hinduja Complex, Paras Nagar Chowk, Near Railway Line, Devendra Nagar, Raipur, Tah. And Distt. Raipur C.G.

---- Respondents

For Appellants	:	Shri Anil Gulati, Advocate.
For Respondent No.2	:	Shri Raja Sharma, Advocate.

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

10.07.2020

1. Enhancement of the compensation awarded by the Additional Motor Accident Claims Tribunal, North Bastar Kanker, (*for short 'the Tribunal'*) in respect of loss of life of the deceased in a motor accident, is the subject matter of this appeal.

2. The sequence of events shows that the deceased by name Sanjeet Mandal was proceeding on a motor cycle alongwith another person by name Ranju Ram on 14.07.2011. While so, when they reached the place of occurrence, the offending vehicle bearing Registration No. CG 04-J-5828, driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, knocked them down, causing fatal injuries leading to the death of the driver Sanjeet Mandal. This led to the claim petition preferred by the parents and the sibling of the deceased.

3. The claim was sought to be resisted by the Respondents denying their liability. After completion of the trial, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the 1st Respondent/Driver of the offending vehicle. With regard to quantum of compensation, the case of the Appellants/Claimants was that the deceased, aged 25 years, was working as a 'cook' and was earning a sum of Rs. 6,000/- per month. However, the Tribunal reckoned only a sum of Rs. 3,000/- per month as the notional income and worked out the compensation towards the loss of dependency applying the multiplier of 10 (with reference to the age of the parents/claimants). It was accordingly, that a sum of Rs. 2,40,000/- was awarded towards the loss of dependency. A sum of Rs. 5,000/- was awarded towards loss of love and affection, Rs. 5000/- each towards loss of estate and Rs. 5000/- towards funeral expenses, thus awarding a total sum of Rs.2,75,000/-. The said amount was directed to be satisfied with interest at the rate of 7.5% per annum and the liability was mulcted upon the 3rd Respondent Insurer of the offending vehicle, by virtue of existence of a valid insurance policy.

4. The learned counsel for the Appellant/claimants submits that the compensation awarded by the Tribunal is much on the lower side and is virtually contrary to the law declared by the Supreme Court as to relevant

factors which have to be considered and given effect to. The learned counsel submits that the notional income reckoned is abysmally low and further, there is absolutely no basis for the fixation of multiplier as '10', without any regard to the age of the deceased. Inadequacy of the amounts awarded under the other heads are also highlighted. The learned counsel points out that the Tribunal has omitted to consider the future prospects as well, while fixing the 'multiplicand'; which requires to be rectified and enhanced by this Court.

5. The learned counsel appearing for the Respondent No.3/Insurance Company submits that the occupation and income have not been properly substantiated and in the said circumstance, the notional income fixed by the Tribunal as Rs. 3,000/- per month is perfectly in order. The learned counsel also submits that the deceased was a bachelor and as such, the deduction towards personal expenses by 1/3rd is not correct and that, it should be 50%, in view of the settled position of law.

6. After hearing both the sides, we find that there cannot be any doubt with regard to the course to be followed, in view of the declarative judgments rendered by the Apex Court in ***Sarla Verma & Ors v. Delhi Transport Corp. & Anr.*** reported in **(2009) 6 SCC 121,** as affirmed by the Constitution Bench in ***National Insurance Company Limited v. Pranay Sethi & Another***, reported in **(2017) 16 SCC 680.**

7. In the instant case, the deceased was an able bodied youth of 25 years and the accident was in the year 2011. We are of the view that the monthly income fixed by the Tribunal notionally as Rs. 3,000/- is on the lower side and is requires to be enhanced to Rs. 4,000/-. By virtue of the law declared by the Supreme Court in the judgments cited above, in the case of a person who is below 40 years of age and with no fixed income,

enhancement by 40% is necessary towards future prospects. In the said circumstances, the monthly income has to be re-fixed as Rs.4,000+ (4,000 X 40/100)=**Rs.5600**. Since the deceased was a bachelor, deduction of personal expenses shall be 50% and only the remaining 50% shall be taken as contribution to the family, in the light of the rulings cited (supra). Similarly, it is settled law, that the multiplier has to be fixed with reference to the age of the deceased. In the instance case, since the deceased was aged above 25 years, the appropriate multiplier is '17'. On re-working the compensation towards the loss of dependency, it comes to Rs.5,600x12x50/100x17= Rs. 5,71,200/-. Since the Tribunal has awarded only a sum of Rs. 2,40,000/- towards the loss of dependency, the balance under this head comes to **Rs. 3,31,200/-**. By virtue of the law declared by the Supreme Court as cited above and also in light of the subsequent ruling in ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram*,** reported in **(2018) 18 SCC 130,** the Claimants/parents are entitled to get 'Filial consortium' of Rs.40,000/- Since the Tribunal has awarded only a sum of Rs.15,000/-, they are entitled to get the balance amount of **Rs. 25,000/-** under this head. It is awarded accordingly. Similarly, going by the above rulings, the Claimants are entitled to get a sum of Rs.15,000/- towards funeral expenses. Since the Tribunal has awarded only Rs.5,000/-, there is a deficit of **Rs.10,000**/-, which also stands awarded in this appeal.

8. The Apex Court has already held that a sum of Rs.15,000/- is payable as conventional amount towards the 'loss of estate'. Since the Tribunal has already awarded the said amount, nothing more is to be added under this head. Even in cases where the death is instantaneous, it is only to appropriate to award a sum of **Rs. 10,000/-** towards the pain and suffering undergone by the victim and it stands awarded. Thus, the total

balance compensation payable comes to Rs. 3,76,200/- (Three Lac Seventy Six Thousand Two Hundred Rupees Only). The said amount is required to be satisfied with interest at the rate of 7% per annum from the date of petition till satisfaction. Since the existence of valid insurance policy is not disputed, we direct the 3rd Respondent/Insurance Company to deposit the said amount before the Tribunal with intimation to Claimants, as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment.

The appeal stands allowed the above extent.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Hem