NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 935 of 2015

Reserved on 15.09.2020
Pronounced on 21.09.2020

1. Jambai, Wd/o Vijay Kumar Gendre Aged About 36 Years R/o Village Bakarkatta, P.S. Bakarkatta, Tahsil Chuikhadan, District Rajnandgaon Chhattisgarh.
2. Bishat, S/o Vijay Kumar Gendre Aged About 21 Years R/o Village Bakarkatta, P.S. Bakarkatta, Tahsil Chuikhadan, District Rajnandgaon Chhattisgarh.
3. Dharam Das, S/o Vijay Kumar Gendre Aged About 19 Years R/o Village Bakarkatta, P.S. Bakarkatta, Tahsil Chuikhadan, District Rajnandgaon Chhattisgarh.
4. Minor Manoj Kumar, S/o Vijay Kumar Gendre Aged About 8 Years Minor Through Mother Jam Bai W/o Vijay Kumar Gendre R/o Village Bakarkatta, P.S. Bakarkatta, Tahsil Chuikhadan, District Rajnandgaon Chhattisgarh.
5. Minor Ku. Ritu, D/o Vijay Kumar Gendre Aged About 4 Years Minor Through Mother Jam Bai W/o Vijay Kumar Gendre R/o Village Bakarkatta, P.S. Bakarkatta, Tahsil Chuikhadan, District Rajnandgaon Chhattisgarh.
6. Urmila Bai, W/o Bisram Gendre Aged About 65 Years R/o Village Bakarkatta, P.S. Bakarkatta, Tahsil Chuikhadan, District Rajnandgaon Chhattisgarh. **--- Appellants/Claimants**

Versus

1. Trilok, S/o Keshar Gond, Aged About 25 Years R/o Amgaon, Tahsil Chuikhadan District Rajnandgaon Chhattisgarh.
2. Suruj Ram, S/o Bisram Gond, R/o Tendubhatha, Tahsil Chuikhadan District Rajnandgaon Chhattisgarh.
3. The Oriental Insurance Company Limited, Through The Branch Office Shivnath Complex, G.E. Road, Supela, Bhilai, District Durg Chhattisagrh. **---- Respondents**

For Appellants:	Shri Raghvendra Pradhan, Advocate.
For Respondent No.3:	Shri Deepak Gupta, Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J

CAV Award/Order

1. The Claimants have preferred this appeal questioning the legality and propriety of the award dated 27.04.2015 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon (C.G.)

(hereinafter referred to as 'the Tribunal') in Claim Case No.57/12, whereby, the Tribunal while allowing the claim in part has awarded a total amount of compensation to the tune of Rs.4,04,000/- with 6% interest per annum from the date of filing of the claim petition till the date of actual payment. The parties to this appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated the facts of the case are that on 03.03.2012, deceased Vijay Kumar Gendre was going by his motorcycle along with his friend Jeevan to village Bakarkatta from village Salhewara. At the relevant time, it was hit vehemently from its front side by the offending vehicle “Tractor” bearing Registration No. CG 08 P 1357, which was owned by Non-applicant No.2-Suruj Ram and was insured with Non-applicant No.3- The Oriental Insurance Company Limited. The alleged accident occurred due to rash and negligent driving by its driver Trilok, as a result of which, the deceased fell down and sustained serious injuries and died on the spot. A criminal case was registered against its driver by police station Sahlewara under Sections 279, 337, 338 & 304-A of IPC in connection with the Crime No.21/2012 and after its investigation the charge sheet was submitted before the Judicial Magistrate First Class, Chuikhadan against the said driver under Sections 279, 337, 338 and 304-A of IPC apart from the offense punishable under Sections 3/181 and 5/180 of the Motor Vehicles Act, 1988.

3. On account of the aforesaid accident, the Claimants, being legal representatives of the deceased, have filed a claim petition by submitting *inter alia* that the deceased, 38 years old, was an agriculturist

and was engaged in cattle business as well and used to earn annually Rs.2,00,000/- and thus total amount of compensation of Rs.66,50,000/- has been claimed under various heads.

4. The aforesaid claim has been contested by the Non-applicants and the Tribunal, after considering the evidence placed on record, has arrived at a conclusion that the alleged accident occurred due to rash and negligent driving by the driver of the alleged offending vehicle, resulting into the sad demise of Vijay Kumar. It held further that the vehicle in question was not being used in violation of the policy and that by considering the annual income of the deceased to the tune of Rs.36,000/- awarded a total amount of compensation along with the interest as mentioned hereinabove.

5. Being aggrieved, the Claimants have preferred this appeal. Shri Raghvendra Pradhan, learned counsel appearing for the Claimants submits that the Tribunal, while determining the amount of compensation, has committed an illegality in assessing the income of the deceased only to the tune of Rs.36,000/- per annum and thereby erred further in awarding a meagre amount of compensation even without considering the future prospects of his income and/or without deducting properly the amount with regard to the personal and living expenses of the deceased.

6. On the other hand, Shri Deepak Gupta, learned counsel appearing for Respondent No.3 submits that in absence of proof of the income of the deceased by way of any cogent and reliable evidence, the Tribunal has not committed any illegality in passing the award under appeal.

7. I have heard learned Counsel for the parties and perused the entire record carefully.

8. From perusal of the record, it appears that the amount of compensation as determined by the Tribunal while assessing the income of the deceased only to the extent of Rs.36,000/- per annum even without considering the future prospects of his income and by deducting improperly one third of his income towards his personal and living expenses is unjustified and deserves to be modified.

9. It appears from the documentary evidence marked as Ex.P13 to Ex.P.34 that the deceased was not only an agriculturist but was also engaged in cattle business. However, from perusal of these documentary evidence (Ex.P.13 to Ex.P.34), it is difficult to hold that he used to earn Rs.2,00,000/- annually as claimed by the Claimants. His income, however, under such circumstances, cannot be held to be less than the income of the skilled worker as provided under the Minimum Wages Act, 1948. It could, thus, looking to his involvement as such, be presumed to be a sum of Rs.5,000/- per month which is slightly above to the minimum wages of the skilled worker of Rs.4,719/- as provided under the Minimum Wages Act, 1948 prevailing at the relevant point of time. The annual income of the deceased is accordingly held to be Rs.60,000/-. Since the deceased was found to be 38 years old as evidenced by the postmortem report (Ex.P.12), therefore, while determining his actual income, an addition of 40% of it, i.e., Rs.24,000/- towards future prospects of his income, is to be made in the light of the principles laid down by the Supreme Court in the matter of ***National Insurance Co. Ltd.*** vs. ***Pranay Sethi*** reported in **2017 (16) SCC 680**. It

would, thus, come to Rs.84,000/- (Rs.60,000/- + Rs.24,000/-) and that by looking to the number of dependents upon him, who are six, deduction of one fourth of it, i.e., Rs.21,000/- towards his personal and living expenses, would be appropriate instead of one third deduction as held by the Tribunal, and, yearly dependency would, thus, come to Rs.63,000/- (Rs.84,000/- – Rs.21,000/-). As the age of the deceased at the time of the accident was 38, the multiplier applicable would be 15 in view of the principles laid down by the Supreme Court in the matter of ***Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another*** reported in **(2009) 6 SCC 121.** Therefore, the total dependency would come to Rs.9,45,000/- (Rs.63,000/- x 15).

10. Besides, the wife and the children of the deceased are required to be granted the spousal and parental consortium as per the principles laid down by the Supreme Court in the matter of ***Magma General Insurance Company Limited*** vs. ***Nanu Ram Alias Chuhru Ram and others*** reported in **(2018) 18 SCC 130**, wherein it has been observed in this regard at paragraphs 21.1, 21.2 and 24 as under:-

> **21.1.** 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".
>
> **21.2.** 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".
>
> **24.** 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*..............

11. In the present case, the deceased died in a road accident at the age of 38 years leaving behind his wife, four children and the mother.

Therefore, in the light of the principles laid down in the aforesaid judgment, the wife and children are entitled to be awarded loss of consortium under the head of spousal and parental consortium at the rate as held in the matter of ***National Insurance Co. Ltd.*** vs. ***Pranay Sethi*** (supra). The Claimants are, thus, entitled to the following amounts towards conventional heads as under:-

	Mode of compensation		**Amount Rs.**
(i)	Loss of consortium to wife	-	40,000/-
(ii)	Loss of parental consortium to four children at Rs.40,000/- each	-	1,60,000/-
(iii)	For Funeral expenses	-	15,000/-
(iv)	Loss of estate	-	15,000/-
	Total	**-**	**2,30,000/-** =========

12. The Claimants would, thus, be entitled to a total amount of compensation to the tune of Rs.11,75,000/- (Rs.9,45,000/- + Rs.2,30,000/-) with 6% interest per annum from the date of filing of the claim petition till the date of actual payment.

12.1 Out of the said awarded sum, a sum of Rs.3,00,000/- shall be given to wife Smt. Jambai, out of it, a sum of Rs.2,00,000/- shall be given to her through account payee cheque while rest, i.e., Rs.1,00,000/- are deposited in her name in any of the nationalised bank for a period of three years.

12.2 Likewise, Rs.1,50,000/- each shall be deposited in the name of deceased's major sons Bishat and Dharam Das (Claimants 2 & 3, respectively) and Rs.1,75,000/- in the name of mother Smt. Urmila Bai (Claimant 6) in any of the nationalised bank for a period of three years, which shall be disbursed to them after its maturity as per the direction of the executing court.

12.3 Rest of the amount of Rs.4,00,000/- shall be deposited in equal parts, i.e., Rs.2,00,000/- each in the name of minors, namely, Manoj Kumar and Kumari Ritu (Claimants 4 & 5 respectively) in any of the nationalised bank through their guardian/mother Smt. Jambai for a period of three years, renewable from time to time, till the date of attaining their majorities and shall be disbursed through cheque as per the direction of the executing court.

12.4 In so far as the interest part is concerned, the same shall be calculated at the said rate of 6% per annum from the date of filing of the claim petition till the date of actual payment and be disbursed through cheque as per the direction of the executing court to the Claimants.

12.5 It is observed further that if the mother (Urmila Bai) wants to withdraw a portion of it or the entire deposited amount of her share/interest during the said period of three years, then she is at liberty to move an application for the said purpose before the concerned executing court, which may be considered by it and pass an appropriate order in this regard.

13. The appeal is, accordingly, allowed in part to the extent indicated herein above with the aforesaid observations.

14. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Nikita