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HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. (C) No. 1373 of 2014

{Arising out of Award dated 23.09.2014 passed in Claim Case No. H-23 of 2014 by the Motor Accident Claims Tribunal, Mahasamund (C.G.)}

National Insurance Company Ltd. Through Branch Manager, Mobin Complex, GE Road, Raipur, District Raipur, Chhattisgarh.

---- Appellant

Versus

1. Smt. Urmila Bai W/o Late Umend Kumar Gendre, aged about 23 years.
2. Bhuwan Kumar S/o Late Umend Kumar Gendre, aged about 5 years.
3. Ku. Tarini D/o Late Umend Kumar Gendre, aged about 2 years.
4. Ku. Kanti D/o Late Umend Kumar Gendre, aged about 3 years.

   Respondents No. 2 to 4 are minor, through natural guardian Mother Smt. Hemin Bai.

   All resident of village Saradih, PS Tahsil and District Mahasamund, Chhattisgarh.
5. Wahid Khan S/o Hussain Khan, aged about 55 years, R/o Adhari Nawagaon, District Dhamtari, Chhattisgarh.
6. Mahesh Sharma S/o R.S.Sharma, R/o Dhamtari Road, Abhanpur, Tahsil Abhanpur, District Raipur, Chhattisgarh.

---- Respondents

M.A. (C) No. 1374 of 2014

{Arising out of Award dated 23.09.2014 passed in Claim Case No. H-22 of 2014 by the Motor Accident Claims Tribunal, Mahasamund (C.G.)}

National Insurance Company Ltd. Through Branch Manager, Mobin Complex, GE Road, Raipur, District Raipur, Chhattisgarh.

---- Appellant

Versus

1. Smt. Toshan Banjare W/o Late Sanjay Banjare, aged about 23 years.
2. Ku. Payal D/o Late Sanjay Banjare, aged about 3 years.
3. Ku. Thamini D/o Late Sanjay Banjare, aged about 1 year.

   Respondent No. 2 and 3 are minor, through natural guardian mother Smt. Toshan Banjare.

   All resident of village Joba, PS Tumgaon, Tahsil and District Mahasamund, Chhattisgarh.
4. Bakandas Banjare S/o Parshottam Banjare, aged about 55 years.

5. Smt. Sukwanteen Banjare W/o Bakan Banjare, Aged about 50 years.

   Both R/o village Devda, PS and Tahsil Arang, District Raipur, Chhattisgarh.

6. Wahid Khan S/o Hussain Khan, aged about 55 years, R/o Adhari Nawagaon, District Dhamtari, Chhattisgarh.

7. Mahesh Sharma S/o R.S.Sharma, R/o Dhamtari Road, Abhanpur, Tahsil Abhanpur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant/Insurance Company	: Shri Raj Awasthi, Advocate.
For Respondents/Claimants	: None
For Respondents/Owner & Driver	: Shri Rajat Agrawal, Advocate

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

Judgment on Board

***Per* P.R. Ramachandra Menon, Chief Justice**

29.09.2020

1. These appeals have been preferred by the Insurer of the Bus bearing registration No CG-05-J/1100, in connection with the involvement of the vehicle in a road traffic accident leading to the compensation awarded by the Motor Accident Claims Tribunal, Mahasamund (for short, 'the Tribunal') fixing the liability upon the Insurer of the vehicle. The grievance is against the exorbitant amount awarded by the Tribunal under various heads without any regard to the law declared by the Apex Court.

2. The factual matrix reveals that on 23.07.2013, three persons by name Sanjay Banjare, Umend Kumar Gendre and Devkishan were proceeding on a motor-cycle bearing registration No. CG-04KE/0309. When they reached the place of occurrence, the offending Bus, driven and owned by the Respondents concerned and insured by the Appellant, knocked them down causing death of the persons by name Sanjay Banjare and Umend Kumar Gendre. The widow

and the three minor children of the deceased Umend Kumar Gendre approached the Tribunal by filing Claim Case No. H-23/2014 seeking compensation for the death, whereas similar claim petition being Claim Case No.H-22/2014 was preferred by the widow, two minor children and the parents of the deceased Sanjay Banjare. It was specifically contended by the Claimants that the accident was caused because of the rash and negligent driving of the Bus by its Driver, simultaneously pointing out that the deceased was aged about 25 years and was having an income of Rs.6,000/- per month by virtue of business in Vegetable Mandi. The claim was resisted from the part of the Respondents mainly on the quantum and negligence, though existence of a valid insurance policy was admitted.

3. On conclusion of the Trial, the Tribunal rendered a finding that the accident was solely because of the rash and negligent driving by the Driver of the offending Bus. With regard to the fixation of quantum of compensation, the Tribunal, based on the pleadings and evidence brought on record, reckoned the monthly income in respect of both the deceased on notional basis as Rs. 4000/-. The Tribunal, placing reliance on the binding precedents, reckoned the future prospects to an extent of 50%, thus, reckoning Rs. 4000+(4000X50%) = Rs. 6000/- as the monthly income and adopting a multiplier of 17 (based on the age of the deceased between 25-30 years) the loss of dependency was worked out as Rs. 9,18,000/- (after deducting 1/4th of the income towards the personal expenses of the deceased and taking 3/4th as the contribution towards the family) in both the cases. The Tribunal also awarded a sum of Rs. 25,000/- towards the 'funeral expenses' and a consolidated sum of Rs.4,00,000/- (in both the cases) towards the mental agony, pain and suffering, loss of consortium, loss of love and affection *etc.* Accordingly, a total sum of Rs. 13,43,000/- was fixed as compensation payable with interest at the rate of 6% per annum from the date of claim petition till its realisation in each case; which was directed to be deposited within a period of one month, failing which it was to carry 'penal

interest' at the rate of 9% per annum. The separate awards passed in the above two cases have been sought to be challenged by the Appellant/Insurer in these appeals, seeking to have the amounts scaled down, contending that the award is not in conformity with the verdicts passed by the Apex Court.

4. Despite completion of service of notice, the Respondent-Claimants have not chosen to appear before this Court. When MA(C) No. 1373 of 2014 came up for consideration before this Court on 11.02.2015, the matter was admitted and interim stay was granted on condition that the Appellant/Insurer shall deposit a sum of Rs.8,00,000/- (with liberty to the Claimants to have it withdrawn on furnishing the security). Similar interim order was passed in MA(C) No. 1374 of 2014 on 20.01.2015.

5. Shri Raj Awasthi, the learned counsel appearing for the Appellant/Insurer submits that the Tribunal has gone wrong in adding 50% towards the 'future prospects', which could have been only to an extent of 40% in view of the law laid down by the Apex Court in ***Sarla Verma & Others v. Delhi Transport Corporation & Another***; {(2009) 6 SCC 121}, which stands affirmed by the Constitution Bench in ***National Insurance Company Ltd. v. Pranay Sethi***; {(2017) 16 SCC 680}. The learned counsel further submits that under the conventional heads, only a sum of Rs.15,000/- can be awarded towards the 'funeral expenses' and another Rs.15,000/- towards the 'loss of estate', whereas the 'loss of consortium' payable is only to an extent of Rs. 40,000/-. This being the position, the amount awarded by the Tribunal under these heads are much on the higher side and requires to be brought down.

6. We find considerable force in the submissions made by the learned counsel for the Appellant/Insurer. By virtue of the law declared by the Apex Court as referred to above, in the case of a person below the age of 40 years and having no fixed income, enhancement towards 'future prospects' can only be to an extent of 40%. As such, the notional monthly income to be reckoned becomes Rs.4000+

(4000X40%) = Rs.5600/-. There is no much dispute with regard to the multiplier and so also as to the deduction of 1/4th of the income towards the probable personal expenses of the deceased. Thus, the actual loss of dependency comes to Rs.5600X12X3/4X17=Rs.8,56,800/-. Since the Tribunal has awarded a sum of Rs.9,18,000/- (in both the cases), there is an excess of Rs.61,200/- which required to be deducted.

7. As pointed out already, the compensation payable under the conventional heads such as 'funeral expenses' and 'loss of estate' are Rs.15,000/- each in view of the verdict passed by the Constitution Bench in ***Pranay Sethi's*** (*supra*). The Tribunal has awarded a sum of Rs.25,000/- towards the 'funeral expenses' which is on the higher side and is required to be brought down to Rs.15,000/-. It is ordered accordingly. Since no amount has been awarded under the head 'loss of estate', we find it appropriate to award a sum of Rs. 15,000/- under this head as well in both the cases.

8. It is relevant to note that the term 'consortium' has been explained by the Apex Court in a subsequent decision rendered after ***Pranay Sethi's*** (*supra*) i.e. ***Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram****;* {(2018) 18 SCC 130} whereby it has been made clear that '**parental consortium**' is a compensation given to the children in respect of demise of the parents, '**spousal consortium**' to the living spouse because of the demise of the partner and the '**filial consortium**' payable to the parents on the demise of the children.

9. This being the position, the widow {in MA(C) No. 1373 of 2014} is entitled to get a sum of Rs.40,000/- towards the 'spousal consortium' and the children (together) are entitled to get another sum of Rs.40,000/- towards the 'parental consortium'. Similarly, the Claimants i.e. the widow, minor children and the parents of the deceased {in MA(C) No. 1374 of 2014} are entitled to get similar sum of Rs. 40,000/- towards the 'spousal consortium', Rs. 40,000/- towards the 'parental consortium' and another Rs.40,000/- towards the 'filial consortium' as

explained by the Supreme Court in ***Magma General Insurance Co. Ltd.*** (supra). Thus, the actual compensation payable to the Claimants in MA(C) No. 1373 of 2014 comes to Rs.9,66,800/- and in MA(C) No. 1374 of 2014, it comes to Rs. 10,06,800/-. The Tribunal has awarded a sum of Rs. 13,43,000/- in both the cases. As such, <u>there is an excess of Rs. 3,76,200/-</u> {in **MA(C) No. 1373 of 2014**} which has to be reduced and the award is to be modified. Similarly, **in MA(C) No.1374 of 2014**, the total compensation awarded by the Tribunal is Rs.13,43,000/- and thus, <u>there is an excess of Rs. 3,36,200/-</u> which also needs to be scaled down. It is ordered accordingly.

10. In both the above cases, the interest payable would be as ordered by the Tribunal at the rate of 6% per annum from the date of claim petition till its satisfaction. The 'penal interest' ordered by the Tribunal at the rate of 9% per annum stands set aside.

11. Since the policy stands admitted, we direct the Appellant-Insurance Company to satisfy the balance amount payable as worked out above, of course after giving credit to the amount already deposited by them before the Tribunal, with interest and with intimation to the Respondents/Claimants, as expeditiously as possible, at any rate within 'one month' from the date of receipt of a copy of this judgment.

12. Both the appeals are allowed in part, to the above extent.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Amit