**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 668 of 2013**

*{Arising out of order dated 14.12.2012 passed by learned 5th Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 31 of 2013}*

1. Smt. Sharad Dubey W/o Satyabhan Dubey Aged About 41 Years, Occupation Housewife
2. Satyabhan Dubey S/o Amritlal Dubey Aged About 43 Years

Both R/o Ward No. 6, Near A.P.O. Office, Tilda, Post Office And P.S. Tilda, Tah. Baloda Bazar, Distt. Raipur C.G.

**---- Appellants**

**Versus**

1. Mohanlal Tondekar S/o Shadh Ram Tondekar (Vehicle Driver) Aged About 25 Years R/o village Bamhani, P.O. And P.S. Palari, Tah. Baloda Bazar, Distt. Raipur C.G.
2. Tarkeshwar Sahu S/o Tijau Ram Sahu R/o village Chaprid, P.O. Samoda, P.S. Aarang, Distt. Raipur C.G., District : Raipur C.G.
3. The Royal Sundaram Allianz General Insurance Company Limited Through The Branch Manager, Branch Office, H.D.F. Building, Near Chhoti Line, Devendra Nagar, P.O. Raipur, P.S. Devendra Nagar, Raipur, Distt. Raipur C.G.

**---- Respondents**

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| For Appellants | : | Shri Shivendu Pandya, Advocate. |
| For Respondent No. 3 | : | Shri Rohitashva Singh, Advocate. |

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**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**

**08.06.2020**

1. Inadequacy of compensation awarded by the 5th Additional Motor Accident Claims Tribunal, Raipur, in respect of the death of the deceased boy aged 19 years, is the subject matter of challenge in this appeal.

2. The appeal has been preferred by the Claimants, who are none other than the parents of the deceased. The accident was on 26.01.2011. The deceased, who was riding a motorcycle, was knocked down by the offending vehicle driven by the 1st Respondent, owned by the 2nd Respondent and insured by the 3rd Respondent, causing fatal injuries leading to his death. This led to the claim petition filed by the parents seeking compensation before the claims Tribunal. It was contended that the deceased son of the Claimants, was studying for 'Engineering' in the MATS University, Raipur and that he was also earning an income of Rs.6,000/- per month, by virtue of his engagement as an Accountant in Shriram Automobiles, Aarang. The claim was contested by the 3rd Respondent Insurer, mainly on quantum and negligence. Existence of valid policy was admitted.

3. After evaluating the evidence available on record, the Tribunal arrived at a finding that the accident was only because of rash and negligent driving of the offending vehicle by the 1st Respondent. The Tribunal proceeded to grant compensation under different heads on the basis of available materials brought on record, reckoning Rs.3,000/- as the notional monthly income and adopting a multiplier of '18', based on the age of the deceased. After deducting 50% towards personal expenses, a sum of Rs.3,24,000/- was awarded towards loss of dependency. A further sum of Rs.5,000/- each was awarded towards funeral expenses, loss of love and affection and loss of estate respectively; thus, granting a total compensation of Rs.3,39,000/-, which was directed to be satisfied with interest at the rate of 9% per annum. The liability was mulcted upon the shoulders the Insurance Company, by virtue of the valid insurance policy issued by them. Appeal is for enhancement of the quantum.

4. Heard Shri Shivendu Pandya, the learned counsel appearing for the Appellants and also Shri Rohitashva Singh, the learned counsel appearing for the 3rd Respondent/Insurance Company.

5. The claim that the deceased was having a monthly income of Rs.6,000/- is seriously disputed by the Insurer, pointing out that, admittedly the deceased was only a 'student' and as such, the Tribunal has rightly reckoned the notional income as Rs.3,000/- per month, which does not warrant any modification. But the fact remains that the Appellants/ Claimants have adduced evidence to show that the deceased was pursuing his studies in the 3rd Semester of Engineering at MATS University, Raipur. Since the deceased was studying for a professional course, it cannot be lost sight of, that he was having some bright future on completion of the studies and would have earned much income accordingly. That apart, since the deceased was aged 19 years, having attained majority and being an able-bodied youth, he could have deployed himself for any other work and earned a reasonable income. The accident having occurred in the year '2011', the probable income has to be worked out *w r t* the cost inflation index prevailing at that time.

6. Considering all the facts and circumstances, we are of the view that the notional income reckoned by the Tribunal at Rs.3,000/- per month is on the lower side and it requires to be enhanced and re-fixed at Rs. 4,000/-. By virtue of law declared by the Apex Court in ***Sarla Verma Vs. Delhi Transportation Corporation*** reported in **(2009) 6 SCC 121** as affirmed by the Constitution Bench in ***National Insurance Company Limited vs Pranay Sethi & Others*** reported in **(2017) 16 SCC 680,** it has to be held that the Tribunal has gone wrong in not considering the future prospects. We find it appropriate to consider the 'future prospects' as well and

accordingly, 40% enhancement is necessary towards 'future prospects'. As such, the monthly comes to Rs. 4,000 + 4,000 x 40/100 = Rs. 5,600/-. The appropriate multiplier to be taken is '18', based on the age of the deceased. Dependency compensation, after deducting 50% income towards personal expenses, comes to Rs. 5,600 x 12 x 50/100 x 18 = Rs. 6,04,800/-. After giving credit to the sum of Rs. 3,24,000/- already awarded by the Tribunal, the balance payable under this head is **Rs. 2,80,800/-**.

7. By virtue of the decisions rendered by the Apex Court as mentioned above, it stands settled that the Claimants are entitled to have compensation under the conventional heads, such as, loss of consortium, funeral expenses and loss of estate at **Rs.40,000/-**, **Rs.15,000/-** and **Rs.15,000/-** respectively. The scope of 'consortium' has been subsequently explained by the Apex Court in ***Magma General Insurance Company Limited vs 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 surviving 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, over and above a sum of Rs.5,000/- awarded towards loss of love and affection, a balance of **Rs.35,000/-** is payable towards 'Filial Consortium'. Similarly, a balance amount of **Rs.10,000/-** is payable towards 'Funeral Expenses' and another **Rs.10,000/-** towards 'Loss of Estate' as well. Even if the death was instantaneous, we find it appropriate to grant **Rs.10,000/-** towards 'Pain and Suffering'. In the said circumstance, the total balance compensation payable comes to **Rs.3,45,000/- (Three lakhs forty five thousand rupees).**

8. The balance compensation awarded as above shall be paid by the Insurance Company with interest @ 7% per annum from the date of the claim application, till satisfaction. The amount as above shall be worked out and deposited before the Tribunal, 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 to the said extent.

Sd/-
**(P. R. Ramachandra Menon)**
**Chief Justice**

Sd/-
**(Parth Prateem Sahu)**
**Judge**

Anu