

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 289 of 2014**

{Arising out of order dated 28.10.2013 passed by learned Additional Motor Accident Claims Tribunal, Sarangarh, District Raigarh, Chhattisgarh in Claim Case No.12 of 2012}

1. Shashibhushan Patel S/o Not Mentioned, Occupation Tractor Owner, R/o Village Chote Salhepali, Thana- Baramkela, Tahsil Sarangarh, District Raigarh, Chhattisgarh
2. Shankar Lal Teli S/o Puranjan Teli, Occupation Driver, R/o Village Kharwani, Thana- Baramkela, Tahsil Sarangarh, District Raigarh, Chhattisgarh

---- Appellants**Versus**

1. Smt. Meena W/o Late Chandram Nirala Aged About 40 Years
2. Uttari Kumari D/o Late Chandram Nirala Aged About 28 Years
3. Puttari Kumari D/o Late Chandram Nirala Aged About 25 Years
4. All R/o Village Silyari, P.S. Kosir, Tahsil Sarangarh, District Raigarh, Chhattisgarh

---- Respondents

For Appellants : Shri Hari Agrawal, Advocate.

For Respondents : Shri Syed Majid Ali and Shri Ishwar Jaiswal, 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

30.09.2020

1. Negligence fixed on the 2nd Appellant- driver of the offending vehicle and the quantum of compensation awarded by the Tribunal to an extent of Rs.3,85,000/- with interest, as specified, made the owner and driver of the offending vehicle to have it challenged by filing this appeal.
2. On 18.02.2012, the deceased by name, Chandram Nirala, was proceeding on his Motorcycle. When he reached the place of occurrence, a Tractor bearing No.CG-13/ZG-1246 owned by the 1st Appellant and

driven by the 2nd Appellant, knocked him down, causing fatal injuries leading to his death. This was sought to be compensated by the Claimants (widow and two daughters) by filing claim petition before the Tribunal.

3. The claim was resisted by the Appellants mainly on negligence and quantum. On conclusion of the trial, the Tribunal, on the basis of the materials on record, arrived at a finding that the accident was because of the sole negligence on the part of the 2nd Appellant, who was driving the Tractor at the relevant time. With regard to the quantum of compensation payable, the Tribunal took only a sum of Rs.3,000/- as the notional monthly income of the deceased. It was noted by the Tribunal that there was no reliable material as to the exact age of the deceased and that as per Ex.P/3 postmortem report, the deceased was shown as of 45 years. In the said circumstance, the Tribunal found it appropriate to reckon the multiplier as '15'. Deducting 1/3rd of the income towards personal expenses, the remaining 2/3rd was taken as contribution to the family and the loss of dependency was worked out as Rs.3,60,000/-. Awarding a further sum of Rs.5,000/- towards funeral expenses, Rs.5,000/- towards loss of estate and a sum of Rs.20,000/- towards loss of love and affection, the total compensation was fixed as Rs.3,85,000/-. This was required to be satisfied with interest at the rate of 6% per annum from the date of application and that in case of any failure, it would attract 'penal interest' of 9%.
4. Shri Hari Agrawal, the learned counsel for the Appellants submits that the 1st Claimant who is the widow of the deceased alone was dependent and that the 2nd and 3rd Claimants who are married daughters are not dependents. In the said circumstance, according to the Appellants,

deduction towards personal expenses should have been 50% and not 1/3rd.

5. It has been made clear by the Apex Court in **National Insurance Company Limited v. Birender and Others** reported in **AIR 2020 SC 434** that even the 'married sons' are entitled to get compensation in respect of the loss of life of the deceased as the compensation will form part of the estate, which can be inherited by the persons concerned who are eligible for the same. As such, the contention raised by the Appellants that the deduction towards personal expenses should have been 50% for the alleged non-dependency of the Claimants No.2 and 3 does not hold any water at all.
6. There is a case for the Appellants that the multiplier ought to have been 14 and not 15. Here again, we do not find any merit for the reason that as discussed by the Tribunal in paragraph-14, there was no solid evidence to fix the age of the deceased Chandram Nirala and further, as borne by the contents of Ex.P/3 postmortem report, the age of the deceased was shown as 45 years, which made the Tribunal to fix the multiplier of 15. We do not find anything wrong or illegal, with regard to the course pursued by the Tribunal.
7. The matter can be viewed from another angle as well. The claim petition preferred under Section 166 of the Motor Vehicles Act, 1988 was in respect of the accident occurred in the year 2012. Even a manual labourer of the age of 45 years would have earned much more than the notional income reckoned by the Tribunal at Rs.3,000/- per month. Similarly, the Tribunal has not considered the 'future prospects' for working out the compensation in spite of the decisions rendered by the Apex Court in **Sarla Verma v. Delhi Transportation Corporation**

reported in **(2009) 6 SCC 121** and the Constitution Bench in **National Insurance Company Limited v. Pranay Sethi & Others** reported in **(2017) 16 SCC 680** as well as the subsequent verdict in **Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram & Others** reported in **(2018) 18 SCC 130**. The total compensation awarded by the Tribunal under the conventional heads is only to the tune of Rs.25,000/-, whereas it could have been much more, as per the above rulings.

8. No cross appeal has been filed by the Claimants, as conceded by the learned counsel for the Claimants/Respondents No.1 to 3. It is also seen that the vehicle was not covered by any valid insurance policy. The learned counsel for the Claimants/Respondents No.1 to 3 submits that, it was one of the reasons why no cross appeal was filed.
9. In the above circumstances, we are of the view that the award passed by the Tribunal fixing the total compensation of Rs.3,85,000/- in respect of the death of the deceased can never be stated on the higher side and it does not warrant any interference. However, since the Tribunal does not have any power to award penal interest, we make it clear that the entire amount awarded by the Tribunal will carry only simple interest of 6% per annum from the date of filing of claim application till satisfaction.
10. With the above modification, the appeal stands disposed of.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge